

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6012

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee-Cross-Appellant,

v.

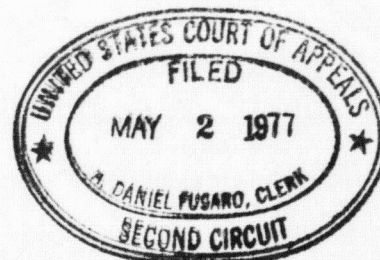
PARKLANE HOISERY CO., INC.
HERBERT N. SOMEKH,

Defendants-Appellants-Cross-Appellees.

Appeal from the United States District Court
for the Southern District of New York

JOINT APPENDIX

Volume II



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INDEX

VOLUME I

	<u>Page</u>
List of Docket Entries	1
Opinion and Order of the United States District Court for the Southern District of New York, dated November 9, 1976	4
Judgment and Order of the United States District Court for the Southern District of New York, entered March 9, 1977	30
Order Amending Final Judgment and Order of the United States District of New York, entered March 24, 1977	33
Corrections to trial transcript	34(a)
Transcript	35
Testimony of Herbert N. Somekh	37
Testimony of Thomas E. Baggott	60
Witness Index	119
Exhibit Index	119
Testimony of Herbert N. Somekh (resumed)	121
Witness Index	246
Exhibit Index	246
Testimony of Herbert N. Somekh (resumed)	247
Testimony of Thomas E. Baggott (resumed)	271
Testimony of Peter A. Russ	301
Testimony of Richard D. Tunick	320
Testimony of Richard D. Tunick (resumed).....	329
Testimony of Robert S. Curtiss	335
Witness Index	396
Exhibit Index	396

VOLUME II

Testimony of Robert S. Curtiss (resumed)	397
--	-----

	<u>Page</u>
Testimony of Herbert N. Somekh (resumed)	420
Witness Index	480
<u>Exhibits</u>	
Defendants' Exhibit A	481
Defendants' Exhibit B	484
Defendants' Exhibit C	485
Defendants' Exhibit E	487
Defendants' Exhibit F	489
Defendants' Exhibit G	491
Defendants' Exhibit I	493
Defendants' Exhibit N	495
Defendants' Exhibit O	497
Defendants' Exhibit P	498
Defendants' Exhibit Q	502
Defendants' Exhibit R	503
Plaintiff's Exhibit 1	502
Plaintiff's Exhibit 3	534
Plaintiff's Exhibit 4	535
Plaintiff's Exhibit 6	536
Plaintiff's Exhibit 7	537
Plaintiff's Exhibit 8	539
Plaintiff's Exhibit 9	540
Plaintiff's Exhibit 10	542

	<u>Page</u>
Plaintiff's Exhibit 11	543
Plaintiff's Exhibit 14	544
Plaintiff's Exhibit 17	545
Plaintiff's Exhibit 18	546
Plaintiff's Exhibit 19	547
Plaintiff's Exhibit 20	548
Plaintiff's Exhibit 21	549
Plaintiff's Exhibit 22	554
Plaintiff's Exhibit 23	558
Plaintiff's Exhibit 24	559
Plaintiff's Exhibit 25	562
Plaintiff's Exhibit 26	564
Plaintiff's Exhibit 27	566
Plaintiff's Exhibit 29	568
Plaintiff's Exhibit 30	569
Plaintiff's Exhibit 31	570
Plaintiff's Exhibit 32	571
Plaintiff's Exhibit 33	575
Plaintiff's Exhibit 34	576
Plaintiff's Exhibit 36	577
Plaintiff's Exhibit 37	579
Complaint	580
Defendants' Amended Notice of Appeal	595
Plaintiff's Notice of Cross-Appeal	596
Affidavit of Herbert N. Somekh	597

1
2
3
4
5
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7
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SECURITIES AND EXCHANGE COMMISSION

v.

76 Civ. 2024

PARKLANE HOSIERY CO., INC.,
HERBERT N. SOMEKH

June 7, 1976
10:20 a.m.

(Trial resumed)

(In open court)

THE COURT: SEC v. Parklane Hosiery Company,
Inc., 76 Civil 2024.

All right, Counselor. Are you ready?

MR. ORMSTEN: Mr. Parker was cross-examining
Mr. Curtiss, and he is in court, your Honor.

R O B E R T S. C U R T I S S,
resumed.

THE COURT: You recall that you took an oath
to tell the truth?

THE WITNESS: Yes, sir.

THE COURT: That oath remains with you today.

THE WITNESS: Yes, sir.

THE COURT: You'd better. Go ahead.

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2 CROSS-EXAMINATION CONTINUED

3 BY MR. PARKER:

4 Q Mr. Curtiss, I show you Plaintiff's Exhibit 32
5 in evidence, which is your letter to Mr. Treiber dated
6 October 7, 1974, and which refers to a conference you had
7 with him on October 4th.

8 I am now handing you that document, sir.

9 MR. ORMSTEN: Excuse me, your Honor. That
10 was a conference not had with Mr. Treiber, but with
11 Mr. Somekh.

12 THE COURT: I understood it.

13 Q In respect of the conference that you had
14 with Mr. Treiber, Mr. Curtiss, did that take place at
15 Mr. Treiber's office?

16 A Yes, it did.

17 Q At the Federal Reserve Bank?

18 A Yes, sir.

19 Q That took place on October 4th, did it?

20 A Yes.

21 Q October 4, 1974, sir, was a Friday.

22 Can you tell me when prior to that Friday,
23 October 4th, the meeting with Mr. Treiber was arranged
24 for that date?

25 A Undoubtedly that morning when I knew that I was

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going to meet Mr. Somekh for lunch.

Q Do you recall whether it was before or after you knew that you were going to meet Mr. Somekh for lunch that that meeting was arranged?

A The meeting was arranged after I knew I was going to meet Mr. Somekh for lunch.

Q The last event referred to in your cross-examination on Friday, June 4, 1976, was the July 15, 1974 telephone conversation with Mr. Somekh, and that occurred at pages 357 to 358 of the hearing transcript, Mr. Curtiss.

Referring to the July 15, 1974 conversation that you testified about, isn't it a fact, sir, that you were not then again in touch with Mr. Somekh after the July 15, 1974 telephone conversation until sometime after September 24, 1974?

A May I refer to my notes, your Honor?

THE COURT: Sure, go ahead.

(Pause)

MR. ORMSTEN: If the Court please, prior to the witness' answering, I respectfully object.

If the question is, is the next time that the witness spoke to Mr. Somekh after July 15th on September 24th, I would respectfully submit the question

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4 lhmch

Curtiss-cross

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should stand. But if the preface to the question, the reference to prior testimony is included, I don't think we can elicit from this witness a clear answer because the question wasn't clear, so that I would request clarification, your Honor.

(Record read)

THE COURT: I will let it stand. It is somewhat prolix, but I will let it stand.

Answer the question.

A (Cont'g) I have no record of a conversation with Mr. Somekh, which doesn't necessarily mean that I didn't speak with him, because we --

Q I am only asking you --

THE COURT: I understand. You move to strike the last part of the answer; right?

If you don't, you don't.

Q Sir, do you recall the date on which the arrangement was made for the luncheon meeting of October 4, 1974, which was a Friday, with Mr. Somekh?

You are again referring to your notes, sir?

A Yes.

Q You are not able to testify without your notes?

A I have some fifty dates to recall --

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Q Sir, I am just asking you a very simple question.

A I received a letter from Mr. Somekh dated June 27, 1974 --

Q Sir, I am asking you, if you will excuse me, in respect of the luncheon meeting that you had with Mr. Somekh on October 4, 1974, can you tell us, please, sir, when prior to October 4, 1974, if it was prior to October 4, 1974, that arrangements were made for that luncheon meeting?

A I would say within a day or so.

Q That is a day or two before October 4, 1974?

A That sounds reasonable.

Q At the October 4, 1974 meeting, the lunch meeting that you had with Mr. Somekh, isn't it the fact, sir, that you told Mr. Somekh that you would try first to get a commitment to pay \$1,200,000 for the termination of the Parklane lease, and that if you did he was then to try to get commitments to vacate from the subtenant and the franchisee?

A That's not correct. We --

Q You said it is not correct. You answered my question, sir.

THE COURT: ~~That's~~ right. Go ahead.

1 6 lhmch
2 Q Isn't it the fact, sir, that you told Mr.
3 Treiber that you were first to try to get authorization
4 from the Federal Reserve to make an offer of one million
5 two before Mr. Somekh was to attempt to get commitments
6 from his subtenant and his franchisee to vacate the premises?

7 A My recollection is that wasn't what I told
8 Mr. Treiber.

9 Q Sir, would you again, please, refer to
10 Defendants' Exhibit 32, which is before you, and that is
11 your letter to Mr. Treiber, which is Plaintiff's Exhibit 32
12 in evidence.

13 In particular, sir, I refer you to page 3 of
14 that letter and the paragraph, the first sentence of
15 which reads as follows:

16 "Upon my advice to Mr. Somekh that the
17 \$1,200,000 will be paid, he will immediately attempt to
18 secure respective letters from counsel for a vacating of
19 the two occupied premises by a date certain upon payment
20 of the amount stated."

21 A That's what the letter says.

22 Q That's the letter you wrote to Mr. Treiber;
23 is that correct?

24 A That's correct.

25 THE COURT: The answer is "yes"? That is the
letter you wrote? 0000402

THE WITNESS: Yes, sir.

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Curtiss - cross

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Q Mr. Curtiss, isn't it the fact that to this day you have never advised Mr. Somekh that the Federal Reserve would pay one million, two for the termination of the Parklane leasehold at 68-70 Nassau Street, isn't it?

A That is correct.

Q Is it correct, sir, that after October 4, 1974 you advised Mr. Somekh that the Federal Reserve Bank may never even build a building at Nassau and John Street?

A That's correct.

Q Isn't it the fact, Mr. Curtiss, that in 1974 you had also advised Mr. Somekh that if the building were constructed at the Nassau-John Street site, the continued existence of the Parklane store would be no deterrent?

A That is correct.

Q It is also the fact, Mr. Curtiss, is it not, that the Federal Reserve Bank had architectural plans drawn for the construction of a building at the Nassau-John Street site, working around the Parklane store without demolishing it?

A That is correct.

Q Isn't it a fact, sir, that you gave a copy of such drawings to Mr. Somekh?

A Yes, sir.

Q And the plans that you gave to Mr. Somekh showed

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1 that the Parklane premises would remain standing so that
2 it would not hold up the project, isn't that so?

3
4 A That's correct.

5 Q Sir, may I show you Defendant's Exhibit P for
6 identification, which purports to be a letter from John
7 Dinkeloo, an architect, dated April 6, 1973, with two
8 drawings, and ask you if you can identify those as the
9 drawings which you had given to Mr. Somekh?

10 A Yes, sir.

11 MR. PARKER: Your Honor, I offer Defendant's
12 Exhibit P for identification in evidence.

13 THE COURT: Do you object, Mr. Ormsten?

14 MR. ORMSTEN: May I just take a look at it?

15 THE COURT: Sure.

16 (Pause.)

17 THE COURT: Do you object?

18 MR. ORMSTEN: I just want to see the original.
19 May I just ask one or two questions, your Honor?

20 THE COURT: No. Do you object or not? Do you
21 want a voir dire on it?

22 MR. ORMSTEN: I am not clear to whom the letter
23 is addressed.

24 THE COURT: Sure, go ahead, ask him.

25 MR. ORMSTEN: To whom is this letter addressed?

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1 THE WITNESS: It was a memorandum prepared for the
2 Federal Reserve Bank for my use.

3 THE COURT: For your use?

4 THE WITNESS: Yes, sir.

5 THE COURT: Did you send it to anybody else?

6 THE WITNESS: No, I did not.

7 THE COURT: It was strictly yours?

8 THE WITNESS: No, it was prepared for me to give
9 to Mr. Somekh and his associates.

10 THE COURT: Did you give it to Mr. Somekh?

11 THE WITNESS: Yes, I did.

12 THE COURT: Do you object to it, Mr. Ormsten?

13 MR. ORMSTEN: No objection.

14 (Defendant's Exhibit P was received in evidence.)

15 THE COURT: Tell me, Mr. Curtiss, during this
16 entire period of time that we are talking about, from
17 July let's say right through the end of the year, at any
18 time did you break off negotiations for cancellation of
19 the lease at 68-70 Nassau Street?

20 THE WITNESS: No, sir.

21 BY MR. PARKER:

22 Q Sir, at the time to which the court referred,
23 was not the highest offer ever made by the Federal Reserve
24 Bank \$800,000?
25

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2 A Yes, sir.

3 Q That was made in a letter dated May 16, 1974,
4 isn't that so, sir?

5 A I would say yes.

6 Q And by the terms of that letter, which is Plain-
7 tiff's Exhibit 34 in evidence, you provided, and I am
8 quoting, "This offer must be accepted in writing to me
9 by registered mail on or by May 26, 1974," isn't that
10 correct, sir?

11 A Yes, sir.

12 Q And was that offer accepted by May 26, 1974?

13 A No, it was not.

14 Q Isn't it the fact, sir, that in a letter which
15 you had occasion to write to Mr. Lloyd of July 1, 1974,
16 Defendant's Exhibit I in evidence, that you had used the
17 word "withdrawn" in connection with the top consideration
18 of \$800,000, isn't that so, sir?

19 A Could I see the letter?

20 Q Yes, sir.

21 (Pause.)

22 A Would you mind repeating the question?

23 (Record read.)

24 Q Yes or no?

25 A I am just looking to see if I didn't say "withdrawn."

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2 THE COURT: Did you say "withdrawn" or no?
3 Do you find it there?

4 THE WITNESS: I am reading the letter to see if
5 I said that.

6 MR. PARKER: I may be able to help, your Honor.
7 Paragraph number 3 --

8 THE WITNESS: Yes, I see it.

9 THE COURT: You did use the word "withdrawn"?

10 THE WITNESS: I did.

11 MR. ORMSTEN: Objection, your Honor. I don't
12 believe that's a correct recitation of the evidence from
13 the letter.

14 MR. PARKER: I object to this kind of comment
15 by counsel, your Honor.

16 THE COURT: Sit down. The word is in there.
17 That's all I care about.

18 Q Do you recall that on the occasion of your
19 examination by the Securities and Exchange Commission on
20 December 5, 1974, that at the conclusion of the interro-
21 gation you were invited to make any comments which you
22 thought you might wish to add to the record?

23 A Yes, sir.

24 Q Isn't it the fact that on that occasion you stated
25 as follows, and the transcript, which is Court Exhibit 1

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1 for identification, at page 80 reads as follows: "THE
2 WITNESS," and that is you, Mr. Curtiss, "And he believed
3 me, I think, entirely, when I told him that we were going
4 to go ahead and build a building, and he could sit right
5 there until 1978, it wouldn't bother us a bit."
6

7 You recall that, sir?

8 A Yes, I do.

9 Q Mr. Curtiss, you have before you Plaintiff's
10 Exhibit 34 in evidence, which is a letter bearing a date
11 of May 16, 1974 from you to Mr. Somekh, is that correct,
12 sir?

13 A Yes, sir.

14 Q During my examination of you on Friday after-
15 noon last, which was June 4th, you did identify Plaintiff's
16 Exhibit 34 in evidence at page 350 of the transcript as
17 the letter in which the offer of \$800,000 had been made.
18 That letter was actually written, was it not, sir, or
19 prepared by you on May 15, 1974?

20 A Yes.

21 (Continued on next page.)
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1 rkjb
2 Q And it was on May 15, 1974 that you handed it to
3 Mr. Somekh in your office?

4 A That is correct.

5 Q Sir, I show you Plaintiff's Exhibit 31 in evi-
6 dence which is the letter from you to Mr. Somekh dated
7 July 1, 1974, which according to the first paragraph
8 states: You referred his letter of June 27, 1974 in
9 which the amount of a million, two was mentioned.

10 I ask you, sir, you did reply to that letter,
11 did you not?

12 A The June 27th letter?

13 Q Yes.

14 A Yes.

15 THE COURT: You did reply to it?

16 THE WITNESS: Yes.

17 THE COURT: Shaking your head up and down doesn't
18 get into the record.

19 Q I show you what has been marked as Defendant's
20 Exhibit Q for identification, which purports to be a
21 letter, sir, dated July 2, 1974 from Mr. Somekh to you
22 and ask you if you can identify that, sir, as the reply
23 to your July 1st letter which in turn was a response to
24 Mr. Somekh's June 27th letter.

25 THE COURT: Objection sustained.

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rkjb

Curtiss - cross

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MR. ORMSTEN: Mr. Curtiss, there has been an objection. The court sustained the objection.

Q Mr. Curtiss, I will reframe my question and ask you whether you received the letter which is Exhibit Q, a letter dated July 2, 1974 from Mr. Somekh to you on or about the date which it bears.

A Yes, sir.

MR. PARKER: I offer it in evidence, if your Honor pleases.

MR. ORMSTEN: May I see it, please?

THE COURT: Yes.

MR. ORMSTEN: No objection.

(Defendant's Exhibit Q received in evidence.)

Q Sir, I show you what has been marked as Defendant's Exhibit R for identification which purports to be a letter of July 3, 1974 from you to Mr. Somekh and ask you if that was your response to Mr. Somekh's letter of July 2, 1974?

A Yes, it is.

MR. PARKER: I offer it in evidence, if your Honor please.

MR. ORMSTEN: No objection, your Honor.

(Defendant's Exhibit R received in evidence.)

MR. PARKER: No further questions.

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REDIRECT EXAMINATION

BY MR. ORMSTEN:

Q Mr. Curtiss, you negotiated with Mr. Somekh for approximately three or four years up to 1974, is that correct?

A Yes.

Q During that time, had Mr. Somekh to your knowledge ever made a misrepresentation to you?

A Never did.

Q Was he always, as far as you know, direct and honorable in his negotiations?

A Absolutely.

Q I direct your attention to Exhibit 32 in evidence and particularly the language on page 3.

THE COURT: Show it to the man.

Q The third from the last paragraph.

Would you please read the first sentence starting with "upon my advice."

A "Upon my advice to Mr. Somekh that \$1,200,000 will be paid, he immediately will attempt to secure respective letters from counsel for a vacating of the two occupied premises by a date certain upon payment of the amount stated."

Q Did Mr. Somekh make such representation to you

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1 rkjb

Curtiss - redirect

377

2 that he would seek upon payment of that sum the vacating
3 of the premises by the sub-lessee and the franchisee?

4 MR. PARKER: Object as to form.

5 THE COURT: The form is fine.

6 MR. PARKER: He is asking for a representation,
7 your Honor. He would be more correct if he would call
8 for conversation. That is a conclusory term.

9 THE COURT: All right.

10 Did you have any conversation with Mr. Somekh?

11 THE WITNESS: Yes, sir.

12 THE COURT: In connection with the sub-tenants
13 leaving the premises?

14 THE WITNESS: Yes, sir.

15 THE COURT: What did he say to you about it?

16 THE WITNESS: He was very desirous --

17 THE COURT: Don't tell me what he was. Tell me
18 what he said.

19 THE WITNESS: He said he would make an effort
20 to get them to agree to an amount within the two million
21 overall payment.

22 THE COURT: Did he say they would get out?

23 THE WITNESS: He hoped they would. He couldn't
24 say they would get out.

25 THE COURT: It makes a big difference what he

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1 rkjb

Curtiss - redirect

378

2 said and what he hoped.

3 MR. PARKER: I hope I will not be out of order.
4 I think the witness indicated that he couldn't do it. I
5 just want the record to show it if I may respectfully
6 suggest it.

7 THE COURT: Of course you may suggest it.

8 Tell me what he said.

9 THE WITNESS: He was very desirous --

10 THE COURT: No. He said something.

11 THE WITNESS: He said he wanted them to vacate
12 and we were attempting within the two million based upon
13 the letter he received --

14 THE COURT: Wait a second, Mr. Curtiss. I
15 know maybe this is your first or second time in the court-
16 room, right?

17 THE WITNESS: Not quite. Close to it.

18 THE COURT: We have rules and the rules tell me
19 I have to hear from you what somebody said but not what he
20 was desirous of unless he said, I am desirous of doing
21 something.

22 Tell me what the man said. If you tell me what
23 he was desirous of, unfortunately we may end up in a
24 situation where you are projecting what you wanted onto
25 this man, so just tell me what he said and don't edit.

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1 rkjb

Curtiss - redirect

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2 THE WITNESS: He said he would secure their
3 agreement to vacate for a consideration which would be
4 included in the 1,200,000.

5 MR. ORMSTEN: No further questions of this
6 witness.

7 THE COURT: Do you, counselor?

8 MR. PARKER: Yes, your Honor.

9 RE CROSS EXAMINATION

10 BY MR. PARKER:

11 Q Isn't it the fact, Mr. Curtiss, going back to
12 that meeting, that Mr. Somekh said that if you were able
13 to obtain a commitment from the Federal Reserve Bank to
14 pay 1,200,000, that he would then attempt to secure the
15 commitment letters from the sub-tenant and the franchisee
16 and in that regard, sir, I call your attention to the
17 statement that you made in your letter to Mr. Treiber
18 and was read into the record before?

19 (Continued on next page.)

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MR. ORMSTEN: I respectfully object. The question is unclear.

THE COURT: I will let him answer.

A Yes.

MR. PARKER: No further questions, your Honor.

MR. ORMSTEN: No questions.

THE COURT: Mr. Curtiss, are you in any way involved in this case except as a witness?

THE WITNESS: No, sir.

THE COURT: Do you have any interest in what the outcome may be?

THE WITNESS: None whatsoever.

THE COURT: Thank you.

You may step down.

(Witness excused)

THE COURT: We will take a recess.

(Recess)

(In open court)

THE COURT: Do you rest?

MR. ORMSTEN: The Commission does rest.

MR. PARKER: If your Honor pleases, there is before this Court at this time a motion made on behalf of the defendants to dismiss the complaint under

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1 2 rkmch

2 Rule 12(b) (6) of the Federal Rules of Civil Procedure
3 on the ground there is not a claim upon which relief can
4 be granted, and we move on that ground again, your Honor,
5 for a dismissal of the complaint.

6 Additionally, if your Honor pleases, based
7 upon the case which has been presented on plaintiff's
8 direct case, we move for a judgment on the ground that a
9 prima facie case has not been established by the plaintiff
10 in respect of the claims which were alleged in the
11 complaint, and this would be true with respect to each of
12 the items that the plaintiff has relied upon in bringing
13 this case before your Honor.

14 In this regard, if your Honor will permit us,
15 we will incorporate by reference here in respect of both
16 branches of our motion, the papers which were submitted to
17 your Honor on the motion to dismiss the complaint and
18 also based upon the testimonial and documentary record
19 which has been made here.

20 Further, we respectfully submit, your Honor,
21 that those items of the proxy statement which were
22 challenged have been shown to be proper. As a matter of
23 law, they have satisfied whatever requirements were
24 properly necessary, and in the remaining respect, and in
25 particular the plaintiff confined its language to whether

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1 the appraisers had been provided with the information
2 or sufficient information, and we respectfully submit,
3 your Honor, in that regard, the testimony of Mr. Russ,
4 formerly of Thomson, McKinnon, who was directly involved
5 in the preparation of the appraisal by Thomson, McKinnon
6 and was the only one of the two appraisers that was
7 called.
8

9 On this record, your Honor, we respectfully
10 submit there is no basis, no substance to the claim made
11 by the plaintiff, and for those reasons, if your Honor
12 pleases, we respectfully move that the complaint be
13 dismissed and that judgment be awarded to the defendants.

14 MR. ORMSTEN: If the Court pleases, in the
15 motion to dismiss to which counsel has made reference,
16 and also in addressing this Court during the course of
17 this hearing, particularly with respect to the objections
18 which were to the admission of evidence, counsel made
19 reference to the plaintiff's citation in its brief on
20 the Second Circuit cases concerning going private, and
21 Mr. Parker, opening counsel, was at pains to point out
22 that the theory upon which the plaintiffs had proceeded
23 in this action was not strictly a going-private matter
24 but a failure to disclose. But I think, your Honor, to
25 assert this is merely a failure to disclose case misses

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1 4 rkmch

2 the point in that that is the starting point and not
3 the conclusion of the analysis.

4 Going private is relevant here, your Honor,
5 because in this context, you have a failure to disclose
6 by a fiduciary, Mr. Somekh, in connection with his use
7 of the assets of the sesqui, the shareholders.

8 The degree of disclosure that is required
9 in such a context reaches the level of disclosure which
10 the Supreme Court asks for as early as 1939 in Pepper v.
11 Lytton and in which then Judge Cardoza spoke of.

12 Mr. Somekh, in a fiduciary capacity, misused
13 someone else's assets. He failed to disclose a long
14 course of conduct by which he intended to make such misuse,
15 so we have here the subtle and I think the misleading
16 statement that "I am going to combine my assets with
17 your assets, shareholder, and in addition we will make
18 more economic use of the corporation as a private as
19 opposed to a public device."

20 He never said, "I am hardpressed for cash and
21 I am going to take those assets and reduce a million
22 dollars of indebtedness."

23 Your Honor, we think there is a patent
24 failure to disclose in respect of the use of the assets in
25 the negotiations, and we think plainly that there is

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1 relief that can be granted here that Justice Harlan
2 said in the same or similar context in Mills. We urge
3 this case to shape the relief along the lines that we have
4 suggested in our moving papers, a special counsel who can
5 begin to look and see what is necessary here to correct
6 the deficiencies of disclosure.
7

8 We respectfully urge the Court grant the
9 motion and that the Court begin to correct the inadequacy
10 of disclosure.

11 MR. PARKER: If your Honor please, just one
12 word, and that is, as I heard Mr. Ormsten, and I think the
13 record will bear me out, that he again typified his case
14 as a failure to disclose case which is what I addressed
15 myself to in my remarks in support of the motions.

16 THE COURT: I assume both counsel recognize
17 that the motion made at the end of the plaintiff's case
18 has a different standard than a motion made at the end
19 of the entire case.

20 Under the standards set forth by the Court of
21 Appeals for the motion made at the end of plaintiff's
22 case, the motion is denied.

23 Mr. Parker, do you wish to call any witness?

24 MR. PARKER: Yes, your Honor.

25 THE COURT: Please call your witness.

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ewjb 1

MR. PARKER: I call Mr. Somekh.

HERBERT N. SOMEKH, resumed.

THE COURT: Mr. Somekh, you recall that you were sworn the other day, is that right, under oath.

DEFENDANT SOMEKH: Yes, sir.

DIRECT EXAMINATION (Continued)

BY MR. PARKER:

Q Mr. Somekh, there has been testimony here concerning a corporate loan account of Parklane and a personal loan account of yours and Mrs. Somekh, and those two loan accounts were extensions of credit by Bankers Trust Company, were they not?

A Yes, sir.

Q Those two accounts were maintained at which branch of Bankers Trust Company where those extensions of credit were made available in 1971?

A At the 1345 Sixth Avenue branch.

Q Was Mr. Thomas Baggott the vice president of Bankers Trust who was in charge of that branch at that time?

A Yes, sir.

Q Did Mr. Thomas Baggott, subsequent to 1971, move to another branch of Bankers Trust Company?

A Yes.

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Somekh - direct

386

2 Q When he moved to another branch, which branch
3 was that?

4 A The 550 Seventh Avenue branch.

5 Q Were the corporate loan account of Parklane and
6 the personal account of yours and Mrs. Somekh, that is
7 the loan account, also transferred to the new branch that
8 Mr. Baggott had been assigned to?

9 A It was Mr. Baggott's choice to move to that
10 branch.

11 Q In 1974, what was the figure reached of the
12 amount of certificates of deposit held by Parklane with
13 Bankers Trust Company?

14 A Between a million, two and a million, three.

15 Q Sir, did you at any time during the spring of
16 1974 inquire of Mr. Baggott whether he would wish the
17 Parklane corporate account and the personal loan account
18 of yours and Mrs. Somekh to be moved from Bankers Trust
19 Co. so that other banking arrangements would be made by
20 you?

21 A Yes, sir.

22 Q What did Mr. Baggott say to you on that occa-
23 sion?

24 A Mr. Baggott was very adamant about my keeping
25 the business with Bankers Trust.

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2 Q Sir, isn't it the fact that Mr. Baggott, in the
3 spring of 1974, at no time indicated to you any specific
4 amount by which he wished to have the personal loan
5 account of yours and Mrs. Somekh reduced?

6 MR. GARMANSKY: Objection, your Honor. This is
7 not a hostile witness. I object to leading questions.

8 THE COURT: Go ahead, answer it.

9 A Yes, sir.

10 Q You heard Mr. Baggott testify about the security
11 package which he stated Bankers Trust had in respect of
12 the personal loan account?

13 A Yes, sir.

14 Q You were interrogated by the Securities and Ex-
15 change Commission in connection with the investigation
16 it conducted prior to the commencement of this action,
17 were you not?

18 A Yes, sir.

19 Q You were interrogated on three different occa-
20 sions, isn't that so, sir?

21 A Yes, sir.

22 Q When you were interrogated by the Securities and
23 Exchange Commission prior to the commencement of that
24 action, did the Commission ever inquire as to the personal
25 assets of yours and Mrs. Somekh?

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2 A No, sir.

3 Q Sir, during the course of the examination of
4 Mr. Baggott there was marked in evidence Defendant's
5 Exhibit A which is a letter dated April 25, 1975 from you
6 to Mr. Treanor, Bankers Trust Company, 550 Seventh Avenue.

7 Can you tell us, sir, whether the itemized assets
8 in that letter were owned by you in 1974?

9 A May I take a minute to examine this, sir?

10 Q Please so, sir.

11 A Yes, sir.

12 Q Mr. Somekh, referring to those items of assets
13 in the letter of April 25, 1974, Defendant's Exhibit A
14 in evidence, which are designated by letters running
15 from A through X, can you tell us what the gross amount
16 of those items is?

17 MR. GARMANSKY: Objection, your Honor.

18 THE COURT: It's poorly phrased, but I will let
19 it go. What is the amount, gross?

20 THE WITNESS: \$2,700,000, sir.

21 Q When you were examined, I take it you were not
22 asked by the Securities and Exchange Commission as to any
23 of those assets, were you?

24 A No, sir.

25 Q In addition to those assets, which are listed in

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Somekh - direct

389

2 Defendant's Exhibit A as A through X, in 1974 you also
3 owned the Rite-Aid mortgage about which there has been
4 testimony, is that not so, sir?

5 A Yes, sir.

6 Q The reason that it is not listed in Defendant's
7 Exhibit A is that the Rite-Aid mortgage was sold in 1974,
8 isn't that so, sir?

9 A It was sold on December 6, 1974, sir.

10 THE COURT: What is the date of that exhibit?

11 THE WITNESS: Your Honor, it's April 25, 1975.

12 Q That was sold in 1974 for \$175,000, is that
13 correct?

14 A Yes, sir.

15 Q That was a mortgage which you had told Mr.
16 Baggott in 1974 you would sell?

17 A Yes, sir.

18 Q In 1974, and apart from the Riverbend partner-
19 ship, did you become entitled to the payment of a sum of
20 money from Lehman brothers in connection with a transaction
21 other than Riverbend?

22 A Yes, sir.

23 Q What was the amount of the payment that you
24 were to receive from Lehman brothers in that regard
25 during 1974?

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Somekh - direct

390

A \$150,000 payable \$12,500 a month.

Q Were those payments made to you, sir?

A Yes, sir.

Q Those payments were deposited where?

A Bankers Trust.

THE COURT: Tell me, Mr. Somekh, the amounts that were paid at Bankers Trust, they were paid into your checking account, right?

THE WITNESS: Right.

THE COURT: Were any of these amounts used to reduce personal indebtedness for the \$900,000?

THE WITNESS: No, sir.

Q Sir, in addition, in 1974 there were other assets that you had which are not listed in Defendant's Exhibit A in evidence, isn't that so, sir?

A Yes, sir.

Q Did you have a mortgage that you owned from an entity known as W.P. Estates?

A Yes, sir.

Q What was the amount of that mortgage, sir?

A \$50,000.

Q Was that payable in 1974?

A It was payable in 1974.

Q Was it paid, or did you renew that?

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Somekh - direct

391

A No, I gave the people a two-year renewal.

Q Did you receive interest payments on that mortgage regularly during 1974?

A Yes, sir.

Q Also not listed in Defendant's Exhibit A in evidence is a note on property at 53rd and Second Avenue in New York City. Did you own such a note in 1974, sir?

A Yes, sir.

Q What was the amount of that note, sir?

A \$85,000.

Q How much did you receive for that note in 1974?

A I sold it in May of 1974 for, I think, \$59,500.

THE COURT: How much?

THE WITNESS: \$59,500.

Q Also not listed in Defendant's Exhibit A in evidence is an interest in a building located at 10th and Market Streets in Philadelphia.

Did you own an interest in such a property in Philadelphia in 1974?

A Yes, sir.

Q Did you receive a sum of money in respect of your ownership in that interest in 1974?

A Yes, sir.

Q Am I correct, sir, that the five items I have

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just inquired about amount in the aggregate to \$520,000?

A Mr. Parker, I --

THE COURT: Come on. I won't even use the new matter.

Let me ask you this, Mr. Somekh: Out of the 500 plus thousand dollars, was any of that applied to the personal loan at Bankers Trust?

THE WITNESS: Your Honor, any moneys that came in which were the same to me. They just went into -- into my bank account and with that I paid out of my bank account.

THE COURT: Okay.

Q In 1974, there was an appraisal made, was there not, by Bankers Trust Company of the Riverbend property?

A Yes, sir.

Q Do you recall the name of the appraiser that was used by Bankers Trust in order to obtain that appraisal?

A It's an arm, really, of Bankers Trust. It's a company called Sackman, Gilliland who do appraisals.

Q Do you recall, sir, what the appraisal was by Sackman, Gilliland?

MR. GARMANSKY: Objection, your Honor. There may be things in that appraisal report besides a final conclusory figure which the witness is not capable of testifying to.

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1 THE COURT: I will let him testify to that. Go
2 ahead. Answer the question.
3

4 A The net value after all mortgages or after
5 mortgages, I think, was slightly in excess of \$2 million.

6 Q In excess of 2 million, that's as a net figure?

7 A That's right.

8 Q Sir, I show you what has been marked as Defen-
9 dant's Exhibit J for identification which purports to be
10 an appraisal of the Riverbend property. It's addressed
11 to Mr. Robert Schussler, assistant treasurer, Bankers
12 Trust Company, re Riverbend apartments, Tulsa, Oklahoma,
13 and ask you if that is the appraisal Bankers Trust Company
14 received, sir.

15 A That's a photostat of the appraisal.

16 MR. PARKER: I offer Defendant's Exhibit J in
17 evidence.

18 MR. GARMANSKY: Could we have a moment, your
19 Honor?

20 THE COURT: Sure.

21 Do you object or not?

22 MR. GARMANSKY: I object only on the grounds of
23 relevancy, your Honor.

24 THE COURT: Fine, mark it in evidence.

25 (Defendant's Exhibit J received in evidence.)

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1 Q Sir, was there in 1974, an appraisal made of the
2 Pensauken property, about which there has been testimony
3 in this hearing, by the same organization that had appraised
4 the Riverbend property?
5

6 A Yes, sir.

7 Q Sir, I show you what has been marked as Defen-
8 dant's Exhibit K for identification and ask you if you
9 can identify that as a copy of the appraisal of the Pensau-
10 ken property made in 1974?

11 A It is a copy of the appraisal.

12 MR. PARKER: I offer Defendant's Exhibit K in
13 evidence, your Honor.

14 THE COURT: Mr. Garmsnaky, have you seen it?

15 MR. GARMANSKY: Your Honor, before we -- I have
16 no objection, except on the second page it is dated Febru-
17 ary 25, 1974, and it says as of December 9, 1974. That
18 may possibly be a typographical error. It may be Febru-
19 ary, 1975.

20 THE COURT: In conclusion, to disturb the court,
21 is that what it's about?

22 THE WITNESS: Your Honor, they made a mistake on
23 it.

24 THE COURT: They made a mistake on it?

25 THE WITNESS: They submitted it to me in writing

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1 ewjb

Somekh - direct

395

2 February 25, 1975. They had given me a letter of appraisal
3 in December of 1974, and the writeup was submitted a
4 couple of months later. The normal way --

5 THE COURT: So this is really 1975?

6 THE WITNESS: Yes, sir.

7 MR. PARKER: If your Honor please, if I may, on
8 the first page it says as of December 9, 1974.

9 THE COURT: It looks kind of silly. We will just
10 assume it to mean 1975, and it was a typo. Go on from there.

11 MR. GARMANSKY: No objection, your Honor, except
12 on relevancy.

13 THE COURT: Mark it in evidence.

14 (Defendant's Exhibit K received into evidence.)

15 Q Sir, in Defendant's Exhibit A which is the letter
16 of April 25, 1975 from you to Mr. Treanor at Bankers
17 Trust Company, in the second paragraph on the first page
18 reference is made to --

19 THE COURT: Does he have it?

20 THE WITNESS: Yes, sir.

21 Q Or a listing of assets outside of any jewelry or
22 household effects and assets that "we" may have outside of
23 the United States.

24 In respect of jewelry, Mr. Somekh, was that
25 jewelry owned by Mrs. Somekh?

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A Yes, sir.

Q Mrs. Somekh was an obligor on the personal loan obligation, is that correct, sir?

A Yes.

Q Are you able to state the value or the approximate value of that jewelry in 1974, sir?

A Yes, sir.

Q Would you please tell us?

A It's way in excess of \$250,000.

Q In addition to the assets thus far indicated, you and Mrs. Somekh owned shares in Parklane Hosiery, is that correct?

A Yes, sir.

Q That amounted to how many shares?

A I think somewhere around 400,000 shares.

Q In addition to the receipts you had about which you have testified you also had other interest income?

A Yes, sir.

Q In 1974?

A Yes, sir.

Q What did that amount to, sir?

A About \$57,000 from various mortgages, and I think about \$3500 from whatever my wife was holding in England, the securities that her father had given her.

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Somekh - direct

397

2 Q Sir, did you and Mrs. Somekh guarantee the cor-
3 porate loan that Parklane had at Bankers Trust Company?

4 A Yes, sir.

5 Q Was that a requirement of Bankers Trust Company,
6 that you guarantee the Parklane loan?

7 A It was an integral part of the agreement.

8 Q Sir, at page 9 of a memorandum which the plaintiff
9 has submitted in respect of this hearing, it is stated that
10 your --

11 MR. GARMANSKY: Do you have the exhibit number,
12 Mr. Parker?

13 THE COURT: Read the question, get it out.

14 Q "Only alternative to financial oblivion was to
15 appropriate Parklane's corporate assets" for your own
16 purely selfish reasons, is that correct, sir?

17 A No, sir.

18 Q Sir, but for the support of guarantees by you
19 and Mrs. Somekh of Parklane obligations, was there a
20 likelihood of financial oblivion for Parklane?

21 A Yes.

22 MR. GARMANSKY: Objection.

23 THE COURT: Sustained. We've got speculations
24 bordering there.

25 Q Sir, on the direct examination by Mr. Garmansky,

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1 ewjb

Somekh - direct

398

2 he inquired whether you had told anyone about your personal
3 financial affairs at or about the time that consideration
4 was being given to the subject of Parklane going private.
5 Do you recall that, sir?

6 A Yes, sir.

7 Q Did your personal financial affairs have anything
8 to do with your going private, sir?

9 A No, sir.

10 Q Isn't it the fact, sir, that you did not have
11 to go private in order to pay off your personal loans?

12 A Certainly not.

13 Q And that the consideration, isn't it the fact,
14 given to the question of going private was independent
15 of any discussions you had with Mr. Baggott?

16 A Yes, sir.

17 Q Also in respect of the direct examination by Mr.
18 Garmansky, can you tell us, Mr. Somekh, what reasons you
19 had for giving consideration to the subject of going
20 private?

21 (Continued on next page.)

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25 0000433

1 A The business -- the outlook on the business
2 has changed. Hosiery consumption has dropped from 24 units
3 per capita per year to about 14 in about three years,
4 so that the nature of the business had changed. It
5 became a much risker kind of business.
6

7 There was no trading, so that there was very
8 little interest in the stock. The cost of maintaining the
9 public company formed an integral part, really, of any
10 earnings that we had or could possibly have.

11 The time -- and probably what was most important
12 is the time that it took people in the company to attend
13 to these things to to attend to any shareholder relations
14 or public relations.

15 It just seemed to me that it wasn't the kind
16 of business that people would want as a public kind of
17 shareholding.

18 Q Mr. Somekh --

19 THE COURT: Tell me, Mr. Somekh, this drop
20 in consumption you referred to -- when did Parklane
21 first go public?

22 THE WITNESS: 1968, sir.

23 THE COURT: Did the drop in consumption
24 occur between 1968 and 1974?

25 THE WITNESS: The drop in consumption, sir,

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1 2 ewmch

Somekh-direct

2 began the latter part of 1971.

3 THE COURT: With the introduction of pant
4 suits?

5 THE WITNESS: Or the fact that pant suits
6 became a fact of life.

7 THE COURT: All right.

8 Q Mr. Somekh, prior to September 24, 1974,
9 had there been a determination made that if Parklane went
10 from a public to a private company, that of the assets
11 in which you had an interest, you would then sell Riverbend
12 and Pensauken?

13 MR. GARMANSKY: Objection as to form, your
14 Honor.

15 THE COURT: The form is not great, but I will
16 let him answer it.

17 Go ahead and answer it.

18 A As a matter of fact, can I really have the
19 question because I didn't understand the question quite
20 clearly, Mr. Parker.

21 MR. PARKER: Please let me rephrase it.

22 THE COURT: Rephrase it.

23 MR. PARKER: Thank you.

24 Q Prior to September 24, 1974, had there been
25 a determination made that if the status of Parklane went

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1 3 ewmch

Somekh-direct

2 from public to private, that there would be a sale to
3 Parklane of your interest in Riverbend and the Pensauken
4 property?

5 A No. There was no specific determination of
6 what I would do at that particular time.

7 Q Sir, I show you what has been marked as
8 Defendants' Exhibit C in evidence, which is a letter
9 from you to Mr. Fried of Bankers Trust Company, dated
10 November 29, 1974, and ask you if you can tell me whether
11 that was at or about the time that a decision was made
12 to sell the interest in Riverbend and also the Pensauken
13 property.

14 A Well, this was really the result of the meeting
15 on November 27th at Clarence Rainess to determine what
16 properties should be sold.

17 As I mentioned, it was a long meeting, and
18 that was when the determination to sell the specific
19 properties was made.

20 Q Mr. Somekh, after the meeting which has been
21 referred to, at the board of directors on July 26, 1974,
22 appraisals were made, were they not, of the value of
23 the Parklane shares?

24 A Yes, sir.

25 Q Did you or Parklane in any respect set any

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A No, sir.

A Yes, sir.

A Yes, sir.

A Yes, sir.

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1 5 ewmch Somekh-direct

2 testimony here?

3 A Yes, sir.

4 Q At the time of the August 29, 1974 board
5 meeting, was there anything in writing made available
6 by the appraisers in respect of their appraisals?

7 A I am sure Foster Securities had submitted
8 theirs, and I believe that Thomson, McKinnon had supplied
9 us with a draft. It was a question of getting it typed.

10 Q Sir, on your examination by Mr. Garmansky,
11 he inquired about some of the directors of Parklane
12 in August 1974, and he asked about Mr. David.

13 What is Mr. David's occupation and what does
14 he do?

15 A At that particular time Mr. David was in
16 corporate planning at Mobil Corporation. His duties are
17 to take the requests and proposals submitted by the
18 various divisions, analyze them, and prepare them for the
19 executive committee and for the board of directors.

20 Q By 1974, sir, discussions had been going on
21 concerning the possible purchase of the leasehold at
22 Nassau Street for some six years; is that correct?

23 A Yes, sir.

24 Q Did there come a time, sir, when the Parklane
25 franchisee at 68-70 Nassau Street took the position that

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1 6 ewmch Somekh-direct

2 it wanted no less than \$300,000 or 50 percent of what
3 Parklane might receive, and that the subtenant was
4 demanding \$600,000?

5 A Yes, sir.

6 Q At the time you wrote your June 27, 1974
7 letter setting forth the amount of \$1,200,000 to Mr.
8 Curtiss, the franchisee was then demanding \$300,000 to
9 vacate; isn't that so?

10 A Yes, sir.

11 Q Isn't it the fact, sir, that that was conditioned
12 on acceptance within sixty days or by August 27, 1974?

13 A The letter was written in the franchisee's
14 presence and his attorney's presence at the offices of
15 Kaye, Schoeler because they wanted to make sure that we
16 had their authority before we would send the letter out.
17 That's how we sent the letter out.

18 Q Sir, I show you what has been marked as
19 Defendants' Exhibit N for identification, which purports
20 to be a letter to Parklane Hosiery Company, Inc. from
21 Parklane Apparel, Inc., and ask you if you can identify
22 that letter as the letter to which you referred as the
23 letter from your franchisee (handing).

24 A Yes, issue it.

25 MR. PARKER: I offer Defendants' Exhibit N
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1 7 ewmch Somekh-direct

2 in evidence, if your Honor pleases.

3 THE COURT: Sure.

4 Have you seen it yet?

5 MR. GARMANSKY: No objection.

6 THE COURT: Mark it.

7 (Defendants' Exhibit N received in evidence.)

8 Q In June 1974, did you obtain an extension
9 in respect of the demand of \$600,000 made by the Parklane
10 subtenant at 68-70 Nassau Street?

11 A Yes, sir, they gave me an extension. I think
12 that took me to about the middle of July.

13 Q I show you what has been marked as Defendants'
14 Exhibit O for identification, which purports to be a letter
15 from Jo-Ray Foods, Inc. to Parklane Hosiery Company,
16 Inc., dated June 13, 1974, and ask you if you can
17 identify that as the extension letter.

18 A Yes, sir.

19 MR. PARKER: I offer Defendants' Exhibit O
20 in evidence, if your Honor pleases.

21 MR. GARMANSKY: No objection.

22 THE COURT: Marked in evidence.

23 (Defendants' Exhibit O received in evidence.)

24 (Continued on next page)

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1 lhmch Somekh-direct

2 Q On September 24, 1974, Mr. Somekh, isn't it
3 the fact that there was no offer outstanding from the
4 Federal Reserve Bank with respect to the Nassau Street
5 property?

6 A Yes, sir.

7 Q And any offer which had been made prior
8 thereto had expired by its terms?

9 A Yes, sir.

10 Q Isn't it the fact, sir, that the proposal of
11 \$1,200,000 conveyed to Bankers Trust Company had expired
12 on July 10, 1974?

13 A I think you mean conveyed to the Federal
14 Reserve Bank?

15 Q Federal Reserve Bank.

16 A Yes, sir.

17 Q At the luncheon that you had with Mr. Curtiss
18 in October 1974, did you discuss with him the fact that
19 you had no authority from the subtenant or the franchisee
20 in respect of any offer for the termination of the lease-
21 hold?

22 A Yes, sir.

23 Q Did you and Mr. Curtiss discuss the fact that
24 he was first to obtain, if he could, a firm offer from
25 the Federal Reserve Bank of \$1,200,000?

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2 lhmch

Somekh-direct

MR. GARMANSKY: Objection as to form, your Honor.

THE COURT: No, I will let it stand.

Go ahead. Answer.

A Yes, sir.

Q And that was the proposal of \$1,200,000 which in your June 27, 1974 letter, which is Plaintiff's Exhibit 30 in evidence, you stated was a nonnegotiable figure; is that so?

A Yes, sir.

Q Did Mr. Curtiss ever, to this day, inform you that there was any offer from the Federal Reserve Bank for \$1,200,000 to terminate the leasehold?

A No. There was never any offer from the Federal Reserve Bank.

THE COURT: Of that amount?

THE WITNESS: Of substantially any amount, sir.

Q At the time the \$800,000 offer was outstanding, what were the amounts in the aggregate that the subtenant and the franchisee were seeking?

A \$900,000.

Q After your luncheon meeting with Mr. Curtiss in October 1974, did you contact Parklane franchisee or subtenant at the Nassau Street property to obtain authority

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3 lhmch

Somekh-direct

from them in order to make a proposal to the Federal Reserve Bank?

A No, sir. I had no proposal from the Federal Reserve Bank.

Q Are you an officer or director of any public company?

A No, sir.

Q Are you a major stockholder of any public company?

A No, sir.

Q Did you ever have any intention to violate any of the federal securities laws?

A No, sir.

Q Do you now have any intention of ever violating any of the federal securities laws?

A I certainly do not, sir.

MR. PARKER: I have no further questions at this time, your Honor.

MR. GARMANSKY: May we take one moment, your Honor?

THE COURT: Sure --

MR. PARKER: I do have one question.

THE COURT: Go ahead. You promise it is only going to be one?

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1 4 lhmch

Somekh-direct

2 MR. PARKER: I think so.

3 BY MR. PARKER:

4 Q In respect of your discussions with Mr.
5 Baggott, had you ever promised him to sell any of your
6 assets in order to reduce the personal loan that you
7 and Mrs. Somekh had at Bankers Trust Company, other than
8 the Rite-Aid mortgage and possibly a mortgage on your
9 home?

10 A No, sir.

11 MR. PARKER: Thank you, your Honor.

12 THE COURT: Mr. Garmansky, I am going to give
13 you five minutes to think about your cross-examination.
14 I have some doubt that you went as far in Latin as I did,
15 but there is a quote from Pliny the Younger in some of
16 his letters which might be of aid to you. The quote is,
17 "If I had more time, it would be shorter."

18 MR. GARMANSKY: Thank you, your Honor.

19 THE COURT: Think about it.

20 (Recess)

21 MR. GARMANSKY: Your Honor, a few questions
22 on cross.

23 CROSS-EXAMINATION

24 BY MR. GARMANSKY:

25 Q Did you retain James E. Gibbons Associates to

0000444

1 5 lunch

Somekh-cross

2 do the appraisal report on the Riverbend development
3 property?

4 A Yes.

5 Q Did you do this on your own initiative or
6 did Bankers Trust request an appraisal report?

7 A This is a normal procedure prior to closing
8 any mortgage, so since the property was finished before
9 Mass. Mutual would take the takeout, the construction
10 takeout from Bankers Trust, Bankers Trust and us have to
11 in effect give Mass. Mutual an appraisal of the property,
12 which is -- it is a normal real estate procedure before
13 you close any mortgage.

14 Q Was this appraisal report, Defendants'
15 Exhibit J. done in connection with your sale to Parklane
16 of the interest that you owned?

17 A No, sir.

18 Q What was the purpose of the appraisal report?

19 MR. PARKER: Asked and answered, your Honor.

20 THE COURT: He already answered that.

21 Q Mr. Somekh, do you recall seeing the Foster
22 Securities appraisal report which was submitted by Foster
23 to Parklane at the August 29, 1974 board meeting?

24 MR. PARKER: I believe Mr. Garmansky inquired
25 about that, your Honor, and he got his answer.

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6 lhmch

Somekh-cross

THE COURT: I will let him go into it.

Go ahead. At the board meeting on August 29th, did he see the Foster Securities appraisal?

A There was a draft of the appraisal.

Q Do you recall seeing a draft of the Thomson, McKinnon appraisal?

A I am sorry, Mr. Garmansky. There is a little confusion.

The Foster Securities appraisal was in final form and was submitted. The Thomson, McKinnon form or Thomson, McKinnon writeup, they needed to retype it, and it was filed in draft form.

Q So then at the August 29, 1974 Parklane board meeting, you did in fact see the Foster Securities appraisal report?

A Yes.

MR. PARKER: I object, your Honor. He inquired into this and he has been over this ground before.

THE COURT: He has. The answer is "yes." The same way I heard it the first time.

Q I'd like to read from your testimony given this Court on June 3, 1976 at page 160, question at line 11:

"Do you recall seeing the Foster Securities appraisal report at the board meeting of August 29, 1974?"

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1 7 lhmch

Somekh-cross

2 "A No, sir."

3 Do you recall being asked that question and
4 do you recall giving that answer?

5 A Yes.

6 Now, if you are saying that I read it then,
7 I didn't read it. But the papers were there, sir.
8 So it depends on what we are talking about.

9 Q If you were asked this same question, Mr.
10 Somekh, would your answer be the same?

11 MR. PARKER: Objection, your Honor.

12 THE COURT: Sustained.

13 Q Mr. Somekh, I am showing you Defendants'
14 Exhibit A in evidence.

15 Between October 1, 1974 and December 31, 1974
16 did you ever liquidate any of the assets on Exhibit A
17 in order to reduce your loans at Bankers Trust and the
18 other banks?

19 A No, sir.

20 Q After January 1, 1975, did you ever liquidate
21 any of the assets on Defendants' Exhibit A in order
22 to reduce your personal loan?

23 A No, sir.

24 MR. GARMANSKY: Thank you, Mr. Somekh.

25 No further questions, your Honor.

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2 THE COURT: Okay, Mr. Somekh. Step down.

3 (Witness excused)

4 THE COURT: Do you have another witness, Mr.
5 Parker?

6 MR. PARKER: No, your Honor.

7 THE COURT: That winds it up?

8 MR. PARKER: Yes, your Honor.

9 THE COURT: Do you want to be heard in
10 argument?

11 MR. PARKER: If the Court wishes us to be
12 heard, we are prepared to be heard.

13 THE COURT: I know that this is the first time
14 you have ever appeared before me, and I hope by this point
15 you gather that I try to be reasonable.

16 I certainly do not force you or anybody else
17 to argue at this point.

18 There are three questions which roll around
19 my mind and which I don't have answers to right off the
20 top of my head. So let me tell you what I am interested
21 in, and then why don't you go to lunch and figure out
22 what you want to argue in connection with those three
23 questions.

24 Question No. 1: Is this an appropriate case
25 for consolidation of the preliminary and permanent

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2 injunctions?

3 Question No. 2: What has the evidence shown?
4 Is it something or is it nothing?

5 Question No. 3: If it is something, what
6 kind of relief, if any, should be given?

7 I am also talking to your opponents from the
8 Commission. Why is relief required at this point in
9 time where all of the activities complained about occurred
10 almost two years ago and there is a State court proceeding
11 for an appraisal of the share involved? Isn't that
12 enough? Where do we go from here?

13 That will give you something to think about
14 over lunch.

15 All right. Why don't you plan to be back here
16 around 2:10. I don't expect and I don't think that
17 argument should be too long.

18 You do know where the rough points are, both
19 of you. That's what I want you to address yourselves to.
20 I might suspect that you might have a decision before the
21 day is out.

22 See you at 2:10.

23 (Luncheon recess)

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AFTERNOON SESSION

2:25 p.m.

(In open court)

THE COURT: All right, Mr. Parker, you want to be heard.

MR. PARKER: May it please the Court, it is the defendants' position, your Honor, that the plaintiff has failed to make out a prima facie case in any of the respects in which it has attempted to articulate a challenge here. It has challenged a proxy statement dated September 24, 1974, which had been issued in connection with the return of the corporate defendant Parklane from public to private status.

Insofar as the proxy statement is concerned, the complaint in paragraph 19 indicates what it is that the plaintiff had in mind in bringing this action or challenging the proxy statement. Paragraph 19(a), your Honor, acknowledges that the proxy statement had stated various reasons for the change brought about by a merger which resulted in the return of Parklane to private status.

The complaint which the plaintiff makes is that there was a reason for that change which was not

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disclosed but should have been disclosed, and facing squarely what it is that the plaintiff claims, the plaintiff claims that this was done to aid the individual defendant to meet his personal financial obligations.

Your Honor, we have had some help here in that regard, because the plaintiff has interpreted its own complaint, and in its May 26, 1976 memorandum which it had occasion to submit in reply to defendants' motion to dismiss the complaint, it disclosed that there was a lack of merit to the claim made in the complaint, because at page 9 of that memorandum plaintiff mistakenly contends that Parklane was returned to its private status because it was Mr. Somekh's only alternative to financial oblivion.

When that statement was made, your Honor, and it was before the hearings here had commenced, the evidence has now shown that there was no reasonable basis for it. The plaintiff spent a year and a half investigating the Parklane matter and at no time addressed itself to the question of Mr. Somekh's personal financial condition or had his personal financial condition motivated the merger which took place.

I suppose it would be fair to say, your Honor, and anybody could be subject to the same kind of a thing, but it could be said that there was a failure of the

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investigation in that regard.

What is more important is that the evidence here, of necessity, has failed to support the claim which has been made in the complaint. It seems to us, your Honor, that if the plaintiff had inquired into the question of defendant's financial condition, it would have seen that it could not have led to the unsupported and what we respectfully submit was an imaginary conclusion articulated by the plaintiff in its memorandum.

We submit, your Honor, that this action in respect of the reason for the return of Parklane to a private status would not, and we respectfully submit should not, have been brought. All that plaintiff has shown here is that after Parklane was returned to private status, two properties were sold to Parklane by Mr. Somekh. One was his interest in the Riverbend development in Tulsa, Oklahoma, which he shared with Lehman Brothers interests; the other was the sale of his Pensauken property.

That this could have been in contemplation prior to the merger was disclosed, and disclosed at the very least adequately, as a matter of fact and law. At page 3 of the proxy statement the following appears, and with your Honor's permission I quote:

"If the proposed merger is consummated, the

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shareholders of Newco will be entitled to the benefit of all of the assets, earnings, earning capacity and cash flow of the company."

THE COURT: Are you talking about the footnote at the base of that page?

MR. PARKER: It is not a footnote; it is actually text, your Honor.

May I interject also, your Honor, that it is text under a heading of "Purpose and Background of Proposed Merger."

THE COURT: Yes.

MR. PARKER: If I may continue:

"The merger will make possible a combination of the resources of the company with those of Mr. Somekh (who with his wife and trusts for the benefit of his children owns approximately 86 percent of the stock of Newco) for the conduct of real estate activities of the type that Mr. Somekh has to date conducted individually (primarily development of garden apartments) such a combination is presently being contemplated."

As a result of defendant's motion to dismiss, your Honor, and even before this hearing was commenced, plaintiff for the first time, and we say materially contrary to what had been charged, acknowledged the disclosure that

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1 was made, and, again, in its May 26, 1976 reply memorandum,
2 made the telling statement that the disclosure made
3 "leads the shareholder to believe that the merger will
4 make possible a combination of the resources of Parklane
5 with those of Mr. Somekh," which is precisely what the
6 disclosure is in the proxy statement. There is more
7 of a disclosure than plaintiff has even acknowledged,
8 but it is there, and it cannot be denied, and whether
9 they will admit or deny it would be of no consequence.
10

11 The disclosure, we submit, your Honor, was
12 complete. The plaintiff, and I say this with great
13 respect to the plaintiff, is not even dancing on the head
14 of a pin, because having acknowledged the disclosure,
15 having verbalized itself what it means to a shareholder,
16 and using the very language of the disclosure itself, has
17 shown that there is no problem with that disclosure.

18 But however the plaintiff may argue, and at
19 most it says that the disclosure is there but it is
20 not sufficiently clear, but it is clear, because the
21 inexorable conclusion that has to flow from that disclosure
22 is that if the proposed merger is consummated, the
23 shareholders of the surviving private company will be
24 entitled to the benefit of all of the assets, earnings,
25 earning capacity and cash flow of the company.

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There has been some suggestion that perhaps there should be a disclosure made of the precise or specific use that was to be made of the benefits of the assets, the earnings, the earning capacity and the cash flow of Parklane. But with the information disclosed, your Honor, the specific use to be made of the assets, the earnings, the earning capacity and cash flow, we submit, could not have affected an investment decision by a Parklane shareholder.

We would suggest this, your Honor, that if this were a proxy statement which for some reason, though it might not have been necessary, which for some reason had claimed that one use as against another was to be made of the benefits of the assets, the earnings, the earning capacity and cash flow of the company, and it was established that the use to be made of the assets was otherwise, it still would not have affected an investment decision, though the statement would not have been true.

But that is not the case here, your Honor. The disclosure was complete, it was truthful, it did not mislead. It stated what was contemplated and the benefits that would be derived by the shareholders of the surviving private company. There was nothing about that disclosure which was or is actionable.

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As to the Federal Reserve Bank-Parklane matter concerning the Parklane leasehold and the possible purchase of it by the Federal Reserve Bank from Parklane, once again there was, as a matter of fact and law, a proper disclosure. Indeed, your Honor, considering the facts that have been adduced here, it is responsibly arguable, we submit, that more of a disclosure than the law requires was made, but any such consideration need not detain the Court.

What this record shows is that the facts disclosed were truthful when made and they are truthful today.

By September 24, 1974, the date of the proxy statement, a substantial offer had been made by the Federal Reserve Bank, but the evidence here shows, your Honor, that at best it was an impossible offer. It was doomed to failure. It was below the demands made by parties which Parklane did not control.

On July 1, 1974, Mr. Curtiss testified, and his letter to Mr. Somekh of that date shows, that there was no offer of \$800,000, there was only what Mr. Curtiss has now testified and his contemporaneous letter stated was a conjecture. This is what Mr. Curtiss told Mr. Somekh in writing, and that statement was construed as no

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offer. The proxy statement so states.

On the very same day, your Honor, which was July 1, 1974, Mr. Curtiss, having written to Mr. Somekh, told him that whether the \$800,000 offer holds is a conjecture, writes to Mr. Lloyd of the Federal Reserve Bank, he refers to the top consideration of \$800,000, that is the top consideration ever offered by the Federal Reserve Bank, and in that regard he uses the word "withdrawn." This is now July 1, 1974. There had been an offer of \$800,000 made in October 1973. There was another one that had been made in May of 1974. Both of them had lapsed by their own terms.

At that time, your Honor, there was certainly no offer of \$1,200,000 outstanding by Parklane, and that was certainly true on September 24, 1974, and it has been true throughout thereafter.

The offer by the Federal Reserve Bank by September 24, 1974 and the proposal of \$1,200,000 by Parklane were nonexistent, and, as I have said, for the same reason: They had both expired by their terms. Nor were there any negotiations in September 1974. At that time all that Parklane had was the nonexistent lapsed offer of \$800,000, and as to the \$1,200,000 proposal, Mr. Curtiss has testified that on July 15, 1974 the

2 \$1,200,000 figure was out of the question.

3 THE COURT: Is it not true, Counsel, however,
4 that the meeting was October 14, 1974, but on October 4th
5 Mr. Curtiss took the \$1,200,000 back to the Federal
6 Reserve Board? Why do you talk about September 24th as
7 being the important date?

8 MR. PARKER: I talked about both dates, your
9 Honor, and I do think that there is something that your
10 Honor may want to have in mind in that regard, because
11 the September 24th date does have its significance in terms
12 of the fact that that is the date of the proxy statement.

13 THE COURT: That's the date of the filing,
14 sure. But the effective date is October 14th.

15 MR. PARKER: And the situation then was the
16 same, your Honor, because on October 4th, as on October 14th,
17 there was no offer outstanding in respect of any amount
18 because there was a meeting -- there were two meetings
19 on October 4th, one with Mr. Somekh and one with Mr.
20 Treiber of the Federal Reserve Bank. Mr. Somekh's meeting
21 with Mr. Curtiss took place first at lunch, and the
22 testimony and the evidence in this case, your Honor, is
23 that, based upon the letter that Mr. Curtiss wrote to
24 Mr. Treiber -- and I may say that that letter helped
25 correct the testimony brought out by the plaintiff on the

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1 direct examination of Mr. Curtiss to the effect that there
2 was a condition precedent to any action on the part of
3 Parklane, and what we contend this record shows is that
4 at the very most there would be no action of any kind
5 until the Federal Reserve Bank had first presented a firm
6 commitment, a firm written offer of one million two, and
7 that did not happen on October 4th, it did not happen on
8 October 14th. It hasn't happened today, your Honor.
9 There was no offer outstanding. Only then --

11 THE COURT: Yes, but let's get back. Is
12 there any place in the financials or in the proxy statement
13 where there is an indication that there were negotiations
14 actively being conducted? With the proxy statement
15 sticker, did anyone let the people know about this?

16 MR. PARKER: Yes, your Honor. I think that
17 what the proxy statement says is really the accurate and
18 correct fact, and I think I can demonstrate that, because
19 on page 15, again as text, the following appears in the
20 proxy statement, sir, and I know how carefully, if I may say
21 this, your Honor followed the testimony and the documents:

22 "Early this year the company received a
23 substantial offer with respect to a property, part of
24 which is occupied by a franchisee and the balance by another
25 sublessee for the assignment of the company's lease and

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the cancellation of the rights of the occupants. On the basis of negotiations with the franchisee and other subtenant, the amount which would have been required to be paid to them would have represented substantially all of the sum offered. The offer has been withdrawn," Mr. Curtiss' own words, "and there are no negotiations at the present. The company is unable to determine if another offer will be made."

They were not saying no new offer will be made. They said there may be, but we cannot tell whether there will or will not, and the reason for it is embodied in the October 7th letter of 1974 that Mr. Curtiss wrote to Mr. Treiber, because what he told him was that upon advice to Mr. Somekh of a firm commitment by the Federal Reserve Bank of one million two, he will then proceed to attempt to get commitments from the subtenant and the franchisee, and the first condition did not come to pass on October 14th; it hasn't come to pass today, your Honor.

THE COURT: Let's suggest, if what you say is right, let's take the one million two and whack it up. It is 600,000 for the franchisee and subtenant and 600,000 for Parklane.

MR. PARKER: No. Am I out of order if I try

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and state the facts?

THE COURT: Sure. That's what you are here for.

1.. PARKER: what the evidence shows, your Honor, a ve no fear of contradiction in this regard, record shows that the demand made by the subtenant, which is the luncheonette called Jo-Ray, was \$600,000. The demand made by --

THE COURT: The record shows that at one time they demanded one million plus and came back and apparently reduced that demand. I am with you. All right.

MR. PARKER: The demand made by the franchisee at that time, your Honor, was \$300,000 for a total of \$900,000, which exceeded the now nonexistent offer of the Federal Reserve Bank by \$100,000, so that if anybody accepted it, he would have to have something wrong with him, because he would be losing \$100,000. And at that time when Parklane had made the offer of one million two, if it were accepted, it expected \$300,000. It put a time limit on it of July 10th.

When the proposal was made and when the time expired, your Honor, it was still a public company. As a matter of fact, thereafter Mr. Somekh went and obtained from the subtenant an extension of that time until there

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2 were no more extensions left, and by the time of the
3 October 4, 1974 meeting Mr. Curtiss said, and his letter
4 so states, so his testimony had to be corrected, "First,
5 Mr. Somekh, I come to you and I say to you that you have
6 a firm offer from us of one million two, and if I ever
7 come to you with that you will then go to the subtenant
8 and the franchisee and try to get from them what you now
9 do not have," and as Mr. Curtiss himself testified
10 today, your Honor, when he met with Mr. Somekh on
11 October 4th and he was asked whether Mr. Somekh had told
12 him that he would get the authorizstions from the subtenant
13 and the franchisee, he said he didn't know.

14 When it was suggested that he might have had
15 authority, Mr. Curtiss said he couldn't do it because
16 he didn't have the authority. So that the statement of the
17 disclosure that we have as of September 24, 1974, your
18 Honor, was confirmed at the meeting of October 4, 1974,
19 it was confirmed when, according to Mr. Curtiss, within
20 a week he called Mr. Somekh and he told Mr. Somekh, "I
21 have got nothing. As a matter of fact, they may never
22 bill."

23 THE COURT: Mr. Parker, let's say on October 4th
24 the deal suggested by Mr. Somekh was accepted by the
25 Federal Reserve Board. Would a disclosure have to be

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2 made?

3 MR. PARKER: If the fact had been other than the
4 fact is?

5 THE COURT: Yes.

6 MR. PARKER: Your Honor, I honestly haven't
7 addressed myself to it, but I would assume that if on
8 October 4th Mr. Curtiss had told Mr. Somekh that there
9 is an offer, a firm offer now for you to accept and do
10 what you can to make it binding of one million two, I
11 would think that it would have been appropriate to disclose
12 it.

13 THE COURT: I would think so, too.

14 Now the question is, would it be appropriate
15 to disclose the fact that negotiations were going on?

16 MR. PARKER: If the facts were other than they
17 are, your Honor, I would question, because, as I have
18 earlier said, I think it can be responsibly argued,
19 and I say this in defense of this proxy statement which is
20 being challenged, it could be responsibly argued that
21 on the facts that have been adduced in this hearing, the
22 disclosure, if I may use the term, was an overdisclosure.
23 But it is there, and the disclosure was adequate as
24 a matter of fact and as a matter of law, your Honor.

25 THE COURT: All right. I just want to make

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2 sure that I understand it.

3 MR. PARKER: I am trying, your Honor.

4 (Continued on next page)

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1 THE COURT: You are doing very well. Don't
2 worry about it.
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4 MR. PARKER: That leaves me with the question of
5 the challenges uttered by the plaintiff -- the claim made,
6 and I use the words advisedly, that the appraisers that had
7 been engaged by Parklane had not been provided with suf-
8 ficient information in connection with the work they had
9 undertaken to do, and there is nothing in this record to
10 show that there is even a scintilla of merit to that claim.
11 It was interesting to hear the testimony of Mr. Russ, it
12 was to me, because Mr. Russ' evidence is that it could not
13 have been material in either respect that the plaintiff
14 had in mind.

15 First, so far as the Federal Reserve Bank-Parklane
16 matter was concerned and on the basis of what is in this
17 record, that Mr. Curtiss on July 1, 1974 wrote that whether
18 the \$800,000 offer holds is a conjecture, Mr. Russ, and
19 there has been no contradiction of this, there has been
20 no detraction from it, no diminution of that testimony,
21 he said, "With a conjecture I could do nothing."

22 So far as the Riverbend situation is concerned,
23 his testimony also disclosed that, aware of it, it was
24 not pursued. In any event, as the court helped developed
25 the examination, it became apparent, we submit, your Honor,

1 that had it been taken into consideration the logical re-
2 sult would have been an appraisal which would have resulted
3 in an amount less than the results that was achieved in
4 the appraisal made by Thomson & McKinnon, because, Mr.
5 Russ said, the single most important factor here was cash
6 flow.
7

8 As I think your Honor inquired, you were making
9 your appraisal based upon given circumstances as of a given
10 time, and his answer was in the affirmative, because what
11 he was saying was that logically if cash flow is the single
12 most important factor in the valuation, and that cash flow
13 to the extent of \$1 million, and that's the amount that
14 Mr. Ormsten used, was dried up, to that extent Mr. Russ
15 stated that meant that the appraisal amount would go down.

16 So that again, if your Honor pleases, there is
17 no basis in fact for the challenge made by the plaintiff,
18 but, even more, if there were any basis for it, the im-
19 materiality of it has been established by the plaintiff's
20 own proof, the proof that the plaintiff adduced by the
21 witness that the plaintiff brought before this court to
22 hear.

23 THE COURT: Wait a second. Let's back up. What's
24 the amount of paid in capital reflected in the proxy state-
25 ment?

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2 MR. PARKER: I could not answer that question,
3 your Honor, without some further refreshment and review of
4 the document.

5 THE COURT: Go ahead.

6 MR. PARKER: If your Honor pleases, among the
7 questions that you had propounded prior to the luncheon
8 recess, you had put it in terms of, is the evidence here
9 something, is it nothing; if it is something, what relief
10 should be granted, if any, and why is relief necessary
11 here in any event in view of the state appraisal proceeding?

12 THE COURT: Sounds like something I'd say. Go
13 ahead. It is your position, let me make sure, it is your
14 position that there is no need whatsoever for any kind of
15 relief here, is that right?

16 MR. PARKER: That is correct, your Honor.

17 THE COURT: And even if there were some kind of
18 violation, which you do not in any way concede, you are
19 saying "What's going on? You are two years down the
20 pike. We have the appraisal, we have everything going
21 on. What do we need any more for?"

22 MR. PARKER: Your Honor, I think this court on
23 substantially similar circumstances has so held. I think
24 your brother judge, Judge Mansfield, in Harwyn so held.
25 He was able to find on substantially similar circumstances,

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2 your Honor, that there was no likelihood of recurrence.
3 Why grant any injunctive relief?

4 THE COURT: Come on, counselor. If you took a
5 look at the opinion, you would find out that I was the
6 attorney of record who lost it. Did you?

7 MR. PARKER: I have lost cases too, your Honor --

8 THE COURT: I get reversed too. But still, it
9 is your position basically that there is no need for relief
10 here. Right?

11 MR. PARKER: There is no likelihood of any re-
12 currence. To answer your question directly, I would say
13 yes, your Honor. I think on the basis of the authorities,
14 the basis of holdings by this court and other courts, that
15 there is no room for relief here, that there is no reason
16 for an injunction. It is a drastic relief whether requested
17 by the government or by a private litigant, but it can
18 only serve no purpose and can do harm that is needless.
19 There would be no purpose served by that kind of relief.

20 THE COURT: Counselor, before it or not, one of
21 the things that terrifies a judge is the fact that we have
22 all kinds of power, and hopefully we use it with a great
23 deal of restraint, and it is a heavy burden to walk around
24 with, believe it or not. Let me find out from the SEC
25 why they think they ought to get some kind of relief.

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2 MR. PARKER: May I add one more word which may be
3 of interest to your Honor?

4 THE COURT: Sure.

5 MR. PARKER: With respect to the existence of the
6 appraisal proceeding, it may also be of interest, I mention
7 this only because your Honor did mention the appraisal pro-
8 ceeding, there is pending in this court a 10B5 case and
9 related sections of the Securities Act --

10 THE COURT: Who has that case and why can't I send
11 him this one?

12 MR. PARKER: Your Honor, we tried, and we did it
13 on the basis of the judicial economy considerations, on the
14 basis of convenience, and that case is before Judge Whatt.
15 I might also mention, your Honor, that there is a class
16 action pending in the State Supreme Court, and this is apart
17 from the appraisal proceeding, and there is also a Securities
18 Act case which is pending in the Eastern District of New
19 York, class actions.

20 THE COURT: Do I add them up right, there are
21 five cases?

22 MR. PARKER: This is the fifth, your Honor. We
23 are suffering and this is the burden we have been put to,
24 but we are trying.

25 THE COURT: Okay. 0000469

2 MR. PARKER: Thank you, your Honor.

3 THE COURT: Mr. Ormsten, I asked you basically
4 three questions before you broke for lunch. Do you want to
5 answer them in order?

6 MR. ORMSTEN: Yes, I will, your Honor, if you
7 will permit me one prefatory statement. There are five
8 proceedings pending, your Honor. In none of those proceed-
9 ings have the shareholders of Parklane been awarded adequate
10 relief in connection with the individual defendants' viola-
11 tions of his fiduciary relationship. We urge the court in
12 this instance to grant the necessary relief.

13 Question 1, should this action be consolidated.
14 Your Honor, in the interest of judicial economy, on the
15 basis of the plaintiff's representation and on the fact
16 that the defendant has presented evidence, we respectfully
17 submit that no purpose would be served other than to con-
18 solidate this action with the trial on the merit.

19 Question 2, what has the evidence shown? In re-
20 spect of Mr. Somekh using the corporate assets to dramatically
21 and significantly reduce his personal indebtedness, I would
22 respectfully submit, at the risk of possibly being mis-
23 interpreted, that although Mr. Somekh and Mrs. Somekh had
24 a quarter of a million dollars in family jewels, there is
25 no evidence, there has been no evidence, that that has been

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2 given to satisfy the personal indebtedness. \$1 million in
3 personal indebtedness was outstanding. It was outstanding
4 for a period of time. It was utilized by the individual
5 defendant after the corporation went private. He never
6 disclosed that was his intention.

7 Judge Duffy, if I was a shareholder, if I had
8 received the proxy statement, I would read the term "com-
9 bination" to indicate -- to indicate to me a beneficiary,
10 of his fiduciary disclosure, that the corporation had some-
11 thing of value, Mr. Somekh had something of value. The
12 corporation went private. The respective dual evalua-
13 tions came together for some benificent corporate purpose.
14 In fact what happened was the corporation had the value,
15 Mr. Somekh had the benefit, and the shareholders had nothing.

16 Your Honor, in respect of the Federal Reserve
17 negotiations, Mr. Curtiss testified before this court and
18 made it crystal clear, he not only bore no ill will to Mr.
19 Somekh, he respected him. He took him at his word. When
20 Mr. Somekh gave his word that the major holdup, the sig-
21 nificant draw-back in the negotiations, had been met, the
22 payment of one million, two to accommodate the sub-lessee
23 and the franchisee, Mr. Curtiss, acting on that representa-
24 tion, turned back to his principal and said, "I recommend
25 you consummate the deal."

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2 Thereafter Mr. Somekh authorized a proxy statement
3 which said, "The offer has been withdrawn. There are no
4 negotiations at present." Mr. Curtiss repeatedly in re-
5 sponse to plaintiff's questions and in response to the
6 court's very helpful questions responded, "The negotiations
7 were continuing."

8 He had neither motive to misrepresent nor in fact
9 did he misrepresent. It is simply not the case that the
10 negotiations had been called to a halt. Indeed, they go on
11 to this very day, and the witness has so testified.

12 In respect of the appraisal, your Honor, counsel
13 has pointed out that the appraiser has indicated that if
14 certain facts which concededly he did not know had been
15 directed to his attention, not only would he have engaged
16 in further inquiry, but it is conceivable that his evalua-
17 tion would have been less.

18 I respectfully submit, your Honor, that that is a
19 two-edge sword, and it suggests that for these who accepted
20 it, they were misinformed by an incomplete appraisal, and
21 those who refused and did not accept were being misled be-
22 cause in fact the appraiser could not accurately tell them
23 that they were getting a correct amount. In neither respect
24 was the appraisal figure one which was full and completely
25 reflective of what the facts of this corporate action were

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and were going to be and were known to be by the defendant, Mr. Somekh.

That's the crucial point in this case, your Honor, because the proxy statement was the instrumentality by which these shareholders were informed of their alternatives.

It is not enough to say, Judge Duffy, that in individual instances there was misinformation. But what of the fact that even if there had been more accurate or different information, the shareholders were in a minority and could not have voted.

As the Second Circuit remarked in Schlick versus Penn-Dixie, it is precisely in such a situation where the majority shareholder can control the action, that he must use the appropriate but perhaps somewhat blunt language of the Second Circuit, air his dirty linen, allow the minority shareholders to take whatever steps they deem necessary in their interest.

What shareholder could have moved in to court and sought a preliminary injunction on the grounds that there were meaningful negotiations with the Federal Reserve when the proxy statement says "There are no negotiations at present."

Respectfully submitted, your Honor, had the shareholder had Mr. Curtiss in tow, had they brought him before a judge in the Southern District of New York, and Mr. Curtiss

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had risen and said "Negotiations had continued, are continuing," there would have been grounds. What could the shareholders do with this disclosure?

Your Honor has asked a third question. Assuming violations, which respectfully submit have been shown, what is the appropriate relief? We respectfully submit that's a two-part question, Judge Duffy.

In the first instance, and I will briefly demonstrate this, there are ongoing and vital equitable factors. Certainly each time that corporate assets, cash, cash flow or notes, are used to down pay the personal indebtedness of Mr. Somekh, the alleged violations continue. They are current, they are continuing, they are ineluctable, absent court action.

Secondly we say what of the shareholders who accepted \$2. A concededly questionable evaluation, since the appraiser said he was insufficiently informed. That, until it is corrected, must be deemed an ongoing violation. What of Mr. Somekh's status?

THE COURT: Wait a second. Let's back up. You tell me that the appraiser says "If I had known all the facts, I would have set the appraisal at a lower amount," and therefore you tell me that a stockholder who got the higher amount is getting hurt. How does that work out?

0000474

2 MR. ORMSTEN: No, Judge Duffy. I said that the
3 stockholder who chooses not to accept and who remains in
4 law and in contemplation of law a shareholder, may have
5 been making his decision on the basis of an incomplete
6 and distorted evaluation by the appraiser, because if the
7 appraiser came in with a figure of \$1, that would have
8 alerted or conceivably alerted shareholders to another
9 course of action, particularly those who did not choose to
10 accept, who thought that their ownership in the corporation
11 was worth enough to risk a court fight, worth enough to
12 seek dissent, worth enough to acquire counsel.

13 THE COURT: Okay. What you are telling me, then,
14 is that the guys got the appraisal in the state court
15 action -- I assume it is the state court action.

16 MR. ORMSTEN: Yes, it is.

17 THE COURT: The guys get the appraisal in the
18 state court action. They get less. Therefore, they are
19 going to be hurt. Don't you agree that whatever the apprai-
20 sal ends up to be, hopefully it will be a just, true and
21 accurate picture of what it should be.

22 MR. ORMSTEN: I agree, your Honor, if you assume
23 that it is conducted in the efficacious and effective manner
24 that the Federal District Court under this court's aegis
25 can conduct it.

0000475

Absent that, I don't assume it, your Honor, because it has been pending too long for these shareholders not to have gotten some meaningful relief. Incidentally, your Honor, it is only 30 shareholders out of approximately 700. To answer the question what is the appropriate relief, we respectfully submit it must be a special counsel, someone to step back, take a dispassionate and judicious view. Because the alternatives are multiple, Judge Duffy.

Conceivably you could say the figure to come out of a state court appraisal proceeding would apply to all shareholders, or, no, it will apply only to those shareholders who are before that court, or it will apply to those who are presently in a class action to which distinguished counsel has alluded, or conceivably the court could say only a new audit is necessary.

THE COURT: What is the special counselor going to do to help that?

MR. ORMSTEN: The special counsel will in essence be the instrumentality by which a non-adversary, economical, swift and just appraisal can be arrived at and in which both sides can comment on to your Honor and then come up with the appropriate value.

Judge Duffy, you might even say "reverses the merger and halt the use of these assets."

1 lhjb

2 THE COURT: It is a big pill to swallow, though,
3 I tell you. What you are suggesting is that a Supreme
4 Court judge, in whatever country he might be, who is hear-
5 ing the appraisal action is not in a position to give you
6 swift, accurate and a fair shake on what the appraisal
7 should be. That's a little tough to take.

8 MR. ORMSTEN: Your Honor, it is not a Supreme
9 Court justice. Judge, he has designated that responsibility
10 to an appraiser who is not otherwise a judicial officer of
11 New York State.

12 But what we are saying is that a special counsel
13 may have the flexibility to come to your Honor and say there
14 are ways in which we can work within the framework of that
15 appraisal proceeding and yet get the relief of greater
16 swiftness, or that it is necessary, based on my dispassionate
17 analysis, to abandon it completely.

18 I don't think it suggests an invidious comparison
19 between the two jurisdictions to say that new or different --

20 THE COURT: No one is accusing you or the Com-
21 mission. It is just something that disturbs me, and I want
22 to make sure that everybody knows that no one is suggesting
23 anything like that.

24 MR. ORMSTEN: We certainly are not, your Honor,
25 but we feel that if new or different facts were to come

0000477

1 before another tribunal, new or different or more swift relief
2 would be appropriate. We think new and different facts have
3 come before this court. What we have said, and I just in
4 summary repeat quickly, Mr. Somekh was a fiduciary. He
5 owed a strikingly high degree of disclosure. He was dealing
6 with the property that belonged to the shareholders, the
7 cestui in this instance. He did not give that degree of
8 disclosure. How do we know? Because the proxy speaks in a
9 deceptively euphemistic way about combining resources,
10 where in fact Mr. Somekh went out and in a programmed,
11 orderly fashion, he usurped to his own use the property of
12 the shareholders and paid down his debt. That wasn't a
13 combination. That was a pay down which, A, must be halted,
14 and, B, must be set to right with the nice adjustments
15 that only equity can make, again to paraphrase Justice
16 Harlan.

17
18 Your Honor, I have nothing further, unless the
19 court has some questions.

20 THE COURT: No. Why don't you guys bring the easy
21 case. Gentlemen, I suggested to you before that I might be
22 able to decide this this afternoon. I am not sure whether
23 I can. I think about this point I know what the facts are.
24 Maybe I have some understanding of the law.

25 The question of the equities is such that I feel

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lhjb

444

I would like to think about it a little longer than just to
make a snap judgment. I will let you know.

(Recess.)

0000479

WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Robert S. Curtiss (Resumed)		363	376	379
Herbert N. Somekh (Resumed)	385	409		

EXHIBIT INDEX

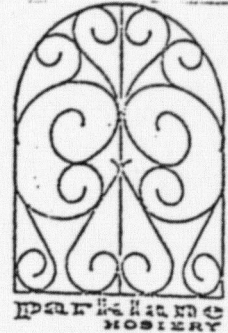
<u>Defendant</u>	<u>Identification</u>	<u>In Evidence</u>
P		370
Q,R		375
J		393
K		395
N,O		405

0000480

EXH. A

April 25, 1975

Mr. Robert Treanor
Bankers Trust Company
550 Seventh Avenue
New York, N.Y.



OFFICE OF
THE PRESIDENT

Dear Bob:

As per our discussion, I will attempt to give you a resume of my holdings, whether they are with you at the bank, or outside, and at the same time attempt to describe some of these items to you so that you will be totally familiar. All information contained here is as of today's date, April 25, 1975. I do realize that you have to do a write-up after we close our loan and this information may be material.

The assets that I am listing here are outside of any jewelry or household effects and any assets that we may have outside of the United States.

- A. YORK SERVICING CORP. Note: This is a note for \$200,000 advance by me to York Servicing Corp. This corporation is owned jointly by Harold and Isadore Strauss and myself. It was formed approximately 10 years ago to fund some real estate projects that were being developed such as Windsor Terrace, 433 JV and Clayton Tract.
- B. OBTAN CORP. NOTE: This is a note for \$200,000 which represents an advance by me to this corporation in Toronto. The funds were used to buy land for future development of single and 2-family housing.
- C. 433 JV: This is a partnership between Harold and Isadore Strauss, Fred Safran and myself wherein together we built a 14-story apartment building on 56th Street and Sutton Place. The building contain 100,000 feet divided into 80 apartments. Approximately 4 years ago, the building was cooped and the partnership retained title to 46 apartments. We are holding these to sell as the coop market improves. The retail value of these apartments is somewhere around \$2,500,000. Of course profits of any initial sales would go to pay the advances made by me and Fred Safran first. As of December 31, 1974, my advances are \$453,000.

Mr. Robert Treanor
Page 2

4/25/75

- D. CLAYTON MORTGAGE: This was a purchase money mortgage on a piece of land that was originally funded by York Servicing and subsequently sold by us, the partners, at a \$75,000 profit. This amount, secured by the company, is due on December 17, 1975. It carries an interest of 9% per annum and my ownership in this is 40% of the amount, or in other words, \$30,000.
- E. 251 CHURCH STREET MORTGAGE: This is a mortgage on this property which was originally due and payable in 1974. It was extended to December 1976 and carries an interest of 6% and is in the amount of \$50,000.
- F. 363 GREAT NECK ROAD MORTGAGE: This is a purchase money mortgage which was part of my sale of the above property. It originally had a face of \$92,000, increasing with the pay-down of what was then an existing mortgage on the property. That mortgage was totally paid off by me in January 1974 and therefore this mortgage became \$125,000 rather than the face that is on the note. It is a standing mortgage.
- G. CHESTNUT STREET, PHILADELPHIA: This is a purchase money mortgage generated in the same manner as the one above. It has a face of \$127,000 and it is a standing mortgage.
- H. 141 Fulton Street: This is a \$50,000 mortgage on this property. It is a standing mortgage and carries an interest rate of 6%.
- I. WINDSOR TERRACE: This is a 100 apartment garden complex in North Plainfield, N.J. My ownership in this project is 40%. The property was built in 1966 for a cost of \$1,050,000. The balance of the mortgage at present is somewhat below \$350,000. The present rent roll is approximately \$250,000. The usual rule of thumb is a value that is between 5-1/2 to 6 times the rent roll.
- J. 19 DORSET ROAD: This is the house which we presently live in. It was purchased in 1953. The present mortgage is around \$3,000 and present value is in the vicinity of \$125,000.
- K. NORFAST 49TH STREET: This is a 7 story building at the northeast corner of 49th and Second Ave., Its rent roll is approximately \$110,000. The mortgage at the present is around \$90,000. The original cost of this property approximately 10 years ago was \$290,000. I own a 1/3 equity.

0000482

Mr. Robert Treanor
Page 3

4/25/75

You are also holding various securities which are not substantial and I do not think it is worthwhile placing any value on them.

In addition to the above, there is approximately \$1,300,000 in notes which were received from Parklane for the sale of the Riverbend and Pennsauken properties. You are holding most of these.

LIABILITIES

- A. Demand note to Bankers Trust Company - \$555,000.00.
- B. First National City Bank: This was a \$125,000 note reduced by 4 monthly payments of \$4,000 each, and is totally due and payable in monthly payments of \$4,000 to December 1977. As of this date, the balance is \$109,000.
- C. Kaye, Scholer: \$30,000 balance due them on legal fees incurred in various transactions.

Sincerely yours,

HERBERT N. SOMEKH
HNS:skb

0000483

E.H. B

July 31, 1973

Mr. Thomas E. Baggott
Bankers Trust Company
550 Seventh Avenue
New York, N. Y.

Dear Tom:

I do appreciate your prompt answer this morning re increasing our present loan from \$500,000 to \$750,000. As I discussed with you before, the whole amount should be due and payable during the first week of January 1975 so that the total amount could be under the line during our September 30th closing.

As I stated to you before, we will immediately add \$250,000 in CD's to the \$700,000 you are presently holding.

Pursuant to that, you told me your attorneys will draw up the proper amendments to our present term loan. Any additional factors that you may like to add, you are welcome to do so.

I would appreciate a note from you to Neil Persky, our Controller, on this so that we would have it confirmed in writing, and I would appreciate your indicating to him the date on which you want the transaction finalized.

Many thanks again.

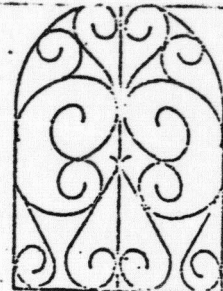
Sincerely,

HERBERT N. SOMMER
HNS:skb
CC: Neil Persky

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BEST COPY AVAILABLE

Eph C



UNITED STATES
POSTAGE

OFFICE OF
THE PRESIDENT

November 29, 1974

Mr. Steve Fried
Bankers Trust Company
550 Seventh Avenue
New York, N.Y.

Dear Steve:

I had a long meeting at Clarence Rainess on Wednesday, November 27th to discuss the best way of transferring some of my assets to Parklane. Of course the assets had to be of adequate value so as to exceed the balance of my loans to Bankers and also of meaningful tax consequence.

After extended discussion, it developed that it does not make any sense from a tax point of view to transfer any depreciable assets. Therefore, we came to the conclusion that the only two assets that made sense were Tulsa and Pennsauken.

The tax accountants wanted to make sure that these were transferred at current value and that the appraisals were arm's length appraisals. I am fortunate in that both of these properties have recently been appraised by your Real Estate Division and therefore the appraisals carry the Bankers Trust name, and since in both cases the appraisals were done either for Bankers Trust's purposes or the purposes of a prominent lender such as Mass Mutual, reinforces the credibility of their results.

The total recent appraised valuation of the two properties amounts to in excess of \$1,300,000 and subject to some last minute nit-picking by the lawyers, we hope to finalize this at the earliest date possible.

As to the Rite Aid, I am informed by John Lehr that the final piece of paper from the State of Pennsylvania to satisfy the Title Guarantee Company was placed in the mail on Wednesday morning and should be in his hand no later than this coming Monday, December 2, and he also assures me that the closing will take place in the middle of the week. I will constantly push on my end and I would appreciate any

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212-233-2300

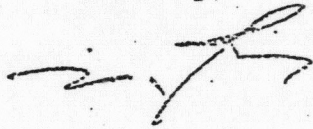
0000485

pushing that you can do on my behalf.

I am enclosing some notes for Holyoke Realty which will tide you over until this closing in the middle of the week and as I stated earlier in the letter to Kaye, Scholer with a copy to you, the proceeds of the mortgage are to go to wipe out the Trust obligation to you, the Holyoke obligation to you and the balance is to reduce my personal debt. This will leave us only with one outstanding loan which will tidy up the situation somewhat.

Many thanks,

Sincerely,



HERBERT N. SOMEKH
HNS:skb
Encl.

0300186

FEDERAL RESERVE BANK OF NEW YORK

NEW YORK, N.Y. 10045

AREA CODE 212 732-5700

October 9, 1973

Mr. Herbert N. Somekh, President
Parklane Hosiery Company, Inc.
343 Great Neck Road
Great Neck, New York 11021

D E H - E

Dear Mr. Somekh:

It has been several months since the last discussion of the termination of your lease at 68-80 Nassau Street. During this time interval, the demolition of all other buildings at our construction site has progressed on schedule, and several other matters of mutual interest have come to light.

Therefore, in order to assist you in your continuing evaluation of your firm's position, it appears timely to review our mutual obligations regarding your lease as well as certain new facts and conditions. Briefly, they are as follows:

Your lease terminates on December 31, 1978.

Your lease represents an obligation on your part to pay us about \$100,000 throughout the remaining life of the lease.

As you have already been informed, the Bank is preparing to proceed promptly with the excavation, foundation work, and construction of the new building. Engineering studies have demonstrated that the premises occupied by you and your subtenant can remain during the excavation and construction period and the new building can be constructed without your premises. Upon the expiration of your lease, a basement can be built where your premises are now located.

In the near future, the southernmost unoccupied section of the building you occupy will be demolished and a new exterior wall will be erected, at considerable expense to us, thereby providing full access to the site for all necessary excavation and construction. Our architects are now preparing final specifications for the excavation and foundation.

0000487

They will modify their preliminary plans so as to exclude the area you now occupy. When the final specifications are put out for bidding, the situation will be frozen and, with our acceptance of the contractor's bid for the work, we will be committed to proceed regardless of any plans you may have.

In view of the above, it has been suggested that we retract completely our outstanding offer for the termination of your lease. However, in accordance with our budgetary allowance, there remains a decreasing fund available for your possible use. By the time we complete our bid documents, it will have been depleted.

Therefore, the following schedule represents our total offer to you in stages of depletion as the funds are spent:

Current date to November 1, 1973	\$800,000
November 1, 1973 to December 1, 1973	600,000
December 1, 1973 to January 1, 1974	400,000
January 1, 1974 to February 1, 1974	200,000
February 1, 1974 and thereafter	Nothing

Very truly yours,

William F. Treiber

William F. Treiber

0000488

A 6844.5

HOFFINGER, FRIEDLAND & ROTH

10 EAST 53RD STREET

NEW YORK, N.Y. 10022

JACK S. HOFFINGER
LAWRENCE N. FRIEDLAND
MURRAY ROTH
ROBERT Z. DOBRISH
DAVID B. BEINFELD
RICHARD COPLON

TELEPHONE (212) 421-9040

March 13, 1974

Mr. Somack
Park Lane Hosiery Company, Inc.
1540 Union Turnpike
New Hyde Park, New York 11040

Dear Mr. Somack:

Gerald Adler, Esq., the former attorney for Jo-Ray Foods, Inc., has resigned as attorney for Jo-Ray Foods, Inc. to take on the position as a Judge of the Civil Court of the City of New York. We are now the attorneys for Jo-Ray Foods, Inc. (Jo-Ray) and write this letter on its behalf.

This letter will confirm the telephone conversation of Mr. Edward Adler with you of last week in which he advised you that Jo-Ray would be willing to sell or surrender its lease in the building known as 68 Nassau Street for a sum of \$800,000 provided that the sale or surrender was consummated prior to April 15, 1974.

If you have any further questions with regard to the contents of this letter, please communicate directly with the undersigned.

Very truly yours,

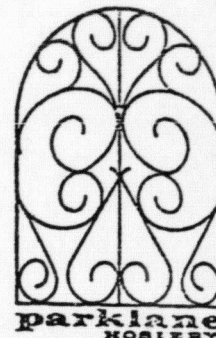
Richard Coplon

RICHARD COPLON

RC:ntw

0000489

March 18, 1974



OFFICE OF
THE PRESIDENT

Mr. Robert Curtis, Sr.
Eli Cruickshank
233 Broadway
New York, N.Y.

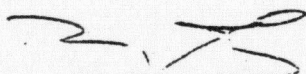
Dear Mr. Curtis:

Apparently the long awaited letter finally has arrived.
I am hereby enclosing a Xerox copy of same.

In addition, I am in receipt of the additional enclosed
letter wherein they complain about certain actions taken
by your clients tha may be affecting their peaceful enjoyment
of the premises.

I would appreciate your either acknowledging to me that these
acts have ceased and that your clients are taking every pre-
caution not to disturb our tenant.

Sincerely,


HERBERT N. SOMER
ENS:skb
Encl.

0000490

Parklane Hosiery Company, Inc., 343 Great Neck Road, Great Neck, New York 11021 (516) 466-3350

ESTABLISHED 1784
Ely-Gruikshank Co. Inc.
Realtors

233 BROADWAY, NEW YORK, N. Y. 10007

212/768-0626

ROBERT S. CURTIS, C.R.E., C.P.M.
REAL ESTATE COUNSELOR

RECEIVED

MAR 22 1974

W. F. T.

ANSWERED

ATTENDED TO

March 21, 1974

Mr. Herbert N. Somekh, President
Parklane Hosiery Company, Inc.
343 Great Neck Road
Great Neck, N. Y. 11021

Re: 68 - 70 Nassau Street

Dear Mr. Somekh:

I acknowledge your letter of March 18, 1974 and the enclosed photo-copy of letter of March 13, 1974 from Richard Coplon, Esq. of the law firm of Hoffinger, Friedland & Roth, who represent your sub-tenant operating as Jo-Ray.

Mr. Coplon's proposal that his client presumably is willing to vacate his premises for a consideration of \$800,000. with a consummation of the arrangement prior to April 15, 1974 is only within your rights as our tenant to consider.

I confirm our telephone conversation of this morning when I again referred to the letter dated October 9, 1973 addressed to you as President of Parklane Hosiery Company, Inc. by Mr. William F. Treiber of the Federal Reserve Bank of New York, your landlord. In that letter the previously offered \$800,000. made to you by myself as the Bank's Real Estate Counselor was conditioned upon your acceptance and you and your sub-tenant vacating premises completely prior to November 1, 1973, with reducing payments until February 1, 1974 after which nothing would be paid.

Upon receipt of your letter above referred to dated March 18th and copy of Mr. Coplon's letter dated March 13th I arranged a conference with my client to attempt to arrive at a new basis which now I am authorized to present to you.

Considering the fact that subsequent to February 1, 1974 the Bank proceeded to authorize:

All information is from sources deemed reliable and its submission is subject to errors, omissions, change of price, rental, guide rate and withdrawal without notice.

0000491

City-Credit Bank Co.

Mr. Herbert N. Somekh, President

March 21, 1974
Page 2

- a) certain plan changes relating to the surface and basement at the corner occupied by you and your sub-tenant (inasmuch as there will be no construction above ground level at this location) and
- b) for demolition of the portion of said building which is vacant substantial expense was incurred.

Under these circumstances there now is consent that the unexpended portion of the original \$800,000., or the sum of \$500,000. is available for me to offer you as consideration for you and your sub-tenant Jo-Ray vacating the demised premise completely prior to April 15, 1974.

Consequently I hereby advise you of those conditions, including the time limit and the agreement to pay you \$500,000. Upon acceptance, counsel for the Bank will arrange to meet with ~~Mr. Caplan~~ *you and your counsel* to close the matter.

Very truly yours,

Robert S. Cantor

RSC:dh

bc: Mr. William F. Treiber

0000492

ESTABLISHED 1784
Ely-Guikshank Co., Inc.

Recallors

233 BROADWAY, NEW YORK, N. Y. 10007

212/760-0626

ROBERT E. CURTIS, C.R.E., C.F.M.
REAL ESTATE COUNSELOR

July 1, 1974

L
Mr. Robert E. Lloyd, Vice President
of Building and Planning
Federal Reserve Bank of New York
33 Liberty Street
New York, N. Y. 10045

Re: Parklane Hostery Co., Inc.
68-70 Nassau Street

Dear Bob:

To confirm our talk the other day and further elaborate upon this tenancy situation and Mr. Somekh's letter of June 27th, copy enclosed with my reply, I shall endeavor to analyze the Bank's various alternatives. Likewise we will consider the tenant - sub-tenant's possible courses.

1. Assuming Parklane is ready and able to follow thru with its proposal of June 27th, there now is a reasonable assurance the Bank may obtain clear possession of the building and proceed to raze it forthwith. Your analysis probably has been made of the planned use of the sub-surface space beneath the present building, with the comparative cost of preparing it now, against the cost of preparing it after December 31, 1978 when the Parklane lease expires. Those costs compared, plus the cost of alterations already made to the building in its present state as an offset, provide the economics required for you now to come to a decision. The posed question, is there a financial justification for paying \$1,200,000. to obtain immediate possession? Do you have any other justification for paying that amount now?
2. A second alternative is to ignore the June 27th proposal and await any further developments. There always is a possibility the tenant or the sub-tenant or both will decide at sometime that their

All information is from sources deemed reliable and is submitted subject to errors, omissions, change of price, rental, price rate and withdrawal without notice.

0000493

File
RECEIVED

by hand
JUL 1 1974

W. F. T.

ANSWERED

ATTENDED TO

DIV. EX # 14

S.C. 12/5/74

A *EXH. 1*
for ID

De-Quilshank Co.

Mr. Robert E. Lloyd, Vice President

July 1, 1974
Page 2

volume of business cannot justify remaining open. This could be a wishful thought, but it is possible. Also, in time, Parklane could come back with a lower figure as a proposal.

3. The Bank could counter the June 27th proposal by restoring the "top consideration" we made months ago, i. e., \$800,000. for vacating. However, according to Mr. Treiber's letter of October 9, 1973 that amount as of now has been withdrawn. The Bank's move in this direction is dependant upon the economics referred to in #1.
4. Should Parklane or Jo-Ray Deli, Inc. begin a default program in rental payments this would bring about a changed situation. Again it is unlikely, unless of course their business volume fails to meet operating expenses and there is a refusal to put in new capital. We realize Parklane would prefer not to have to reply to a dispossess action and appear in court. The Bank at that point should have the advantage.

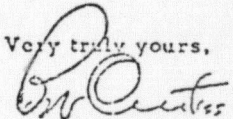
Of course Parklane's accumulated rental paid to the Bank is an offset to the Bank's 68-70 Nassau building alteration expense.

We have assumed that Parklane's franchisee, who operates their store, is under control of Mr. Somekh. I have been advised by Mr. Somekh that he promised his franchisee a payment should one be received by him.

As I rationalize this latest offer I conclude that Mr. Somekh is under his Board of Directors order that any net consideration payment to them must equal the amount of payment the Jo-Ray Deli people would receive. In my discussions with Mr. Somekh in recent months I was under the impression that Jo-Ray was ready to accept \$600,000. to vacate. At one point I anticipated receiving a proposal from Mr. Somekh to accept about \$1,000,000. over-all. This current proposal consequently is not entirely unexpected.

Of course I will be pleased to discuss this matter with you further or follow the Bank's decision.

Very truly yours,



RSC:dh

Enclosures

cc: Messrs. Treiber and Combadet

0000494

062774

D. G. Ellis, Jr.
June 27, 1974

Franklans Hosiery Co. Inc.
40 Union Turnpike
New Hyde Park, New York 11040

Re: 68-70 Nassau Street
New York; New York

Gentlemen:

Please be advised, for a period of sixty days after the date hereof, the undersigned shall accept an amount (without any deductions) which shall be the greater of (i) \$300,000 and (ii) fifty percent (50%) of all sums received by you in payment for your interest and the interests of all others including the undersigned, derived from or through your interest in and to the above premises, in excess of the amount which is to be paid to the holder or owners of the interest of the sub-tenant under that certain sublease dated May 8, 1962 between your company, as Landlord and Anbel Delicatessen, Inc., as Tenant, and whose interest as sub-tenant is presently held by Jo-Ray Foods, Inc., as such lease may have been amended.

The aforesaid sum, when and as same shall be received by you for our interest shall be deemed trust funds, and upon receipt of same, shall constitute payment in full for the release, cancellation and termination of all of our interests in and to the above premises, and all rights under any agreement with respect thereto. The undersigned agree to execute any and all documents and instruments reasonably

0000495

requested of them in appropriate form with respect to
such release, cancellation and termination. Each
party shall pay their own attorneys' fees.

Very truly yours,

Parklane Apparel, Inc.

By Jack Sutton, President

Jack Sutton
Jack Sutton

David Shamula
David Shamula

The foregoing is hereby agreed and
consented to:

Parklane Hosiery Co., Inc.

By [Signature], President

0000 76

EXH. D

June 13, 1974

L

Parklane Hosiery Co., Inc.
1540 Union Turnpike
New Hyde Park, New York 11040

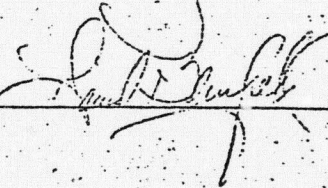
Re: 68-70 Nassau Street

Gentlemen:

Please be advised that for a period of thirty days after the date hereof, the undersigned shall accept the sum of \$600,000.00, as payment in full for release, cancellation and termination of all interests of the undersigned in and to the premises located at 68-70 Nassau Street, New York, New York, and shall execute all instruments reasonably requested of it in appropriate form with respect to such release, cancellation and termination.

Very truly yours,

JO-RAY FOODS, INC.

By 

0000457

Def. Exh. P in End:

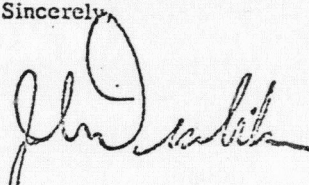
We have carefully examined the possibility of working around Park Lane and the delicatessen store in the 68 Nassau building with the intent of keeping them in business during demolition and construction. Our investigation of course was limited to the visual part and we could not excavate footings, etc., to see the actual buried conditions. It is our conclusion, along with our foundation and structural consultants, that it would be possible to leave these two stores intact. Our plan would be to demolish down to the ceiling of the second floor and leave the second floor as a buffer zone. In order to keep the portion of the building not demolished in business, we would put a new roof on top of it and reroute all of the utilities and construct a temporary heating plant as all of this is now in the portion we would demolish. Our consulting engineers estimate a saving of \$130,000 in the foundations because we would be doing less excavation and putting in a smaller concrete unit, etc. It is our conclusion that we would spend approximately \$200,000 on additional demolition cost, temporary mechanical systems, temporary roofs, walls, etc. Combining both items, the additional net cost would be \$70,000.

If you require, we can give additional details.

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I am enclosing prints showing the area affected.

Sincerely,

A handwritten signature in dark ink, appearing to read "John Dinkeloo", written in a cursive style.

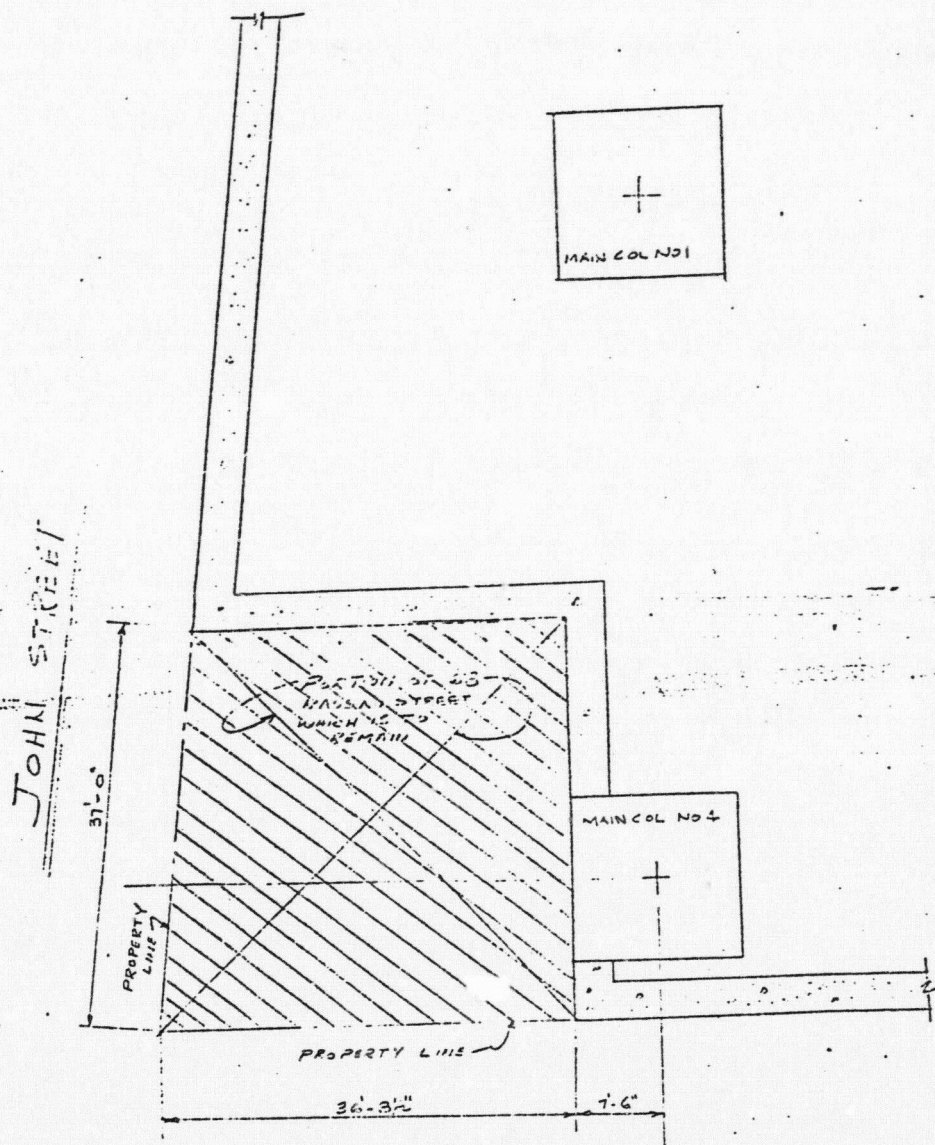
John Dinkeloo

Federal Reserve Bank of New York
33 Liberty Street
New York, New York 10045

Attention: Mr. A. Thomas Combader

April 6, 1973

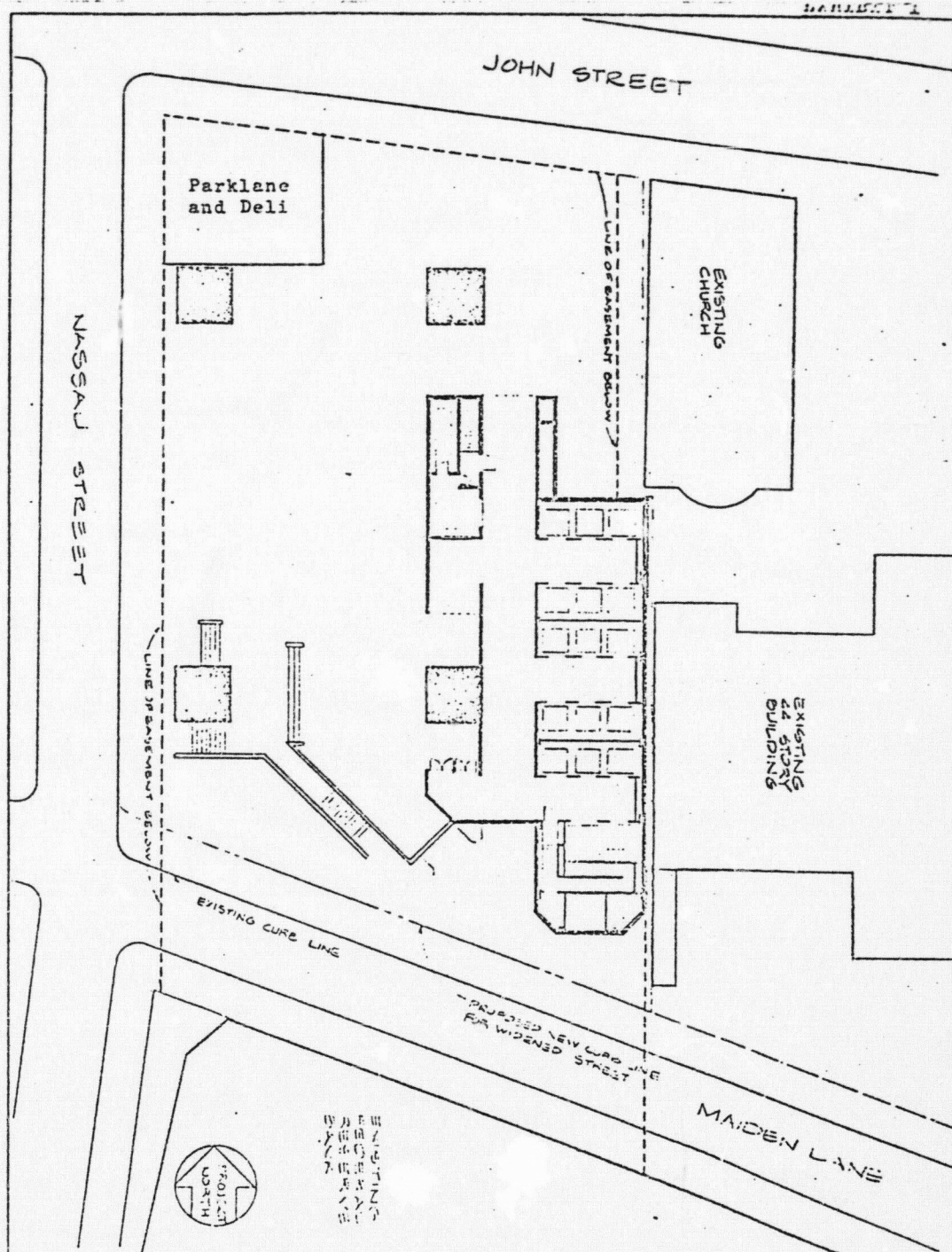
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NASSAU STREET

PART PLAN OF A.B.C.D.E.
 LEVELS OF 7' F.L.S.
 M.L. 4/5/73 E.O.D.

0000530



KEVIN ROCHE JOHN DIKELOO AND ASSOCIATES

DATE NOV 15 1973

DRAWING NUMBER

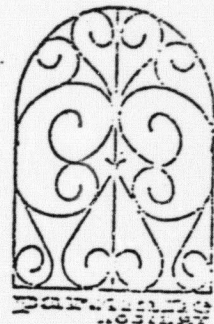
PROJECT NUMBER 14002

PROJECT SITE 14002-1000

REVISION TO SHEET NUMBER

0000501

Def Gxh. & in Evid.



OFFICE OF
THE PRESIDENT

July 2, 1974

Mr. Robert S. Curtiss
Ely-Cruikshank Co., Inc.
233 Broadway
New York, N.Y. 10007

Dear Mr. Curtiss:

I appreciate your prompt response to the letter dated June 27th. I do want to state that I am not pleased with the tone of the reply since there was nothing contrived about anything that you ever received from us.

I don't think that you are either familiar with, nor appreciate, the problems of dealing with out subtenant and our franchisees. At all times these people felt, and still do feel, that we are on your side and are not negotiating to their best advantage. On our side, the company and its Board of Directors always felt that we were entitled to at least one half of any award; or any negotiated award.

It took tremendous effort and time to convince everybody that there should be a compromise of some kind; that the dollars should be adequately reasonable; that it is not to everybody's interest to constantly mistrust everybody else; and that there should be some awareness of the difficulties that you may encounter on your side; and that, also, you had to finally get something firm with which you could work.

I can assure you that a great deal of my time in the last five weeks was spent negotiating this advantageous posture for you, and to receive the kind of reply I got from you, is extremely disappointing.

Nevertheless, I do believe that we have spelled out the situation in as clear terms as we possibly can. I do want to reiterate that I have no latitudes for negotiating anything; that my express authority expires on July 13th and I cannot promise anything beyond that date.

Sincerely,

HERBERT H. SOMMER
HNS:skb

Parklane Realty Company, Inc., 1540 Union Turnpike, New Hyde Park, N.Y. 11040 SIC-222-7422
FIP-222-7422

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Def co. R in Encl

ESTABLISHED 1934
Ely-Gulickshank Co., Inc.
Realtors

233 BROADWAY, NEW YORK, N. Y. 10007

ROBERT S. CURTIS, C.R.E., C.P.M.
REAL ESTATE COUNSELOR

212/766-9626

July 3, 1974

Mr. Herbert N. Somekh, President
Parklane Hosiery Company, Inc.
1540 Union Turnpike
New Hyde Park, N. Y. 11040

Dear Mr. Somekh:

Thank you for your letter of July 2nd. It does explain
your situation clearly and efforts you have put forth with your sub-
stance which I believe and I do understand.

As soon as the Bank considers your proposal and comes
to a decision I will advise you. I shall be in Chicago on July 8th and 9th.

Very truly yours,

Robert S. Curtis

RSC:dh

All information is from sources deemed reliable and is not intended to be a substitute for professional advice. It is not intended to be a substitute for professional advice and is not intended to be a substitute for professional advice.

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PARKLANE HOSIERY COMPANY, INC.

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS

October 14, 1974

CIV. 2024
PLTCH
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
JUN 2 - 1976
/ if

FPI-MI-9-24-75-50N-4417

September 24, 1974

TO OUR SHAREHOLDERS:

You are cordially invited to attend a special meeting of shareholders of Parklane Hosiery Company, Inc. (the "Company") to be held on October 14, 1974 at 10:30 a.m. at the executive office of the Company, 1540 Union Turnpike, New Hyde Park, New York, for the purpose of considering and acting upon:

(1) A proposal to approve and adopt a Plan of Merger between the Company and New PLHC Corp. pursuant to which the Company will become a privately held company and each outstanding share of Common Stock of the Company (other than shares owned by New PLHC Corp.) will be exchanged for \$2.00 in cash, as described in the accompanying Proxy Statement; and

(2) Such other business as may come before the meeting or any adjournment thereof.

Only shareholders of record at the close of business on September 14, 1974 will be entitled to receive notice of, and to vote at, the meeting or at any adjournment thereof.

Under the Business Corporation Law of the State of New York, any shareholder of the Company who objects to the merger in the manner required by statute is entitled to payment of the value of his shares as summarized under the caption "Rights of Dissenting Shareholders" [p. 12] in the accompanying Proxy Statement.

Please sign, date and mail the enclosed proxy promptly in the enclosed envelope (which requires no postage if mailed in the United States) so that your shares of stock may be represented at the meeting.

By Order of the Board of Directors,

CHARLES YAFFE
Secretary

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PARKLANE HOSIERY COMPANY, INC.

PROXY STATEMENT

A special meeting of shareholders of Parklane Hosiery Company, Inc. (the "Company") is to be held October 14, 1974 for the purpose of voting on a proposal to approve and adopt a Plan of Merger of New PLHC Corp. ("Newco") into the Company, a copy of which is attached as Exhibit A to this Proxy Statement. The merger will result in (a) the Company becoming privately held, (b) each shareholder of the Company (other than Newco) receiving \$2.00 a share in cash, and (c) the issuance to the shareholders of Newco of 672,196 shares of the Company.

The accompanying form of proxy for use at such meeting and at any and all adjournments thereof is solicited by management and may be revoked, at any time prior to its exercise, by written notification to the Secretary of the Company. Proxies in the accompanying form which are properly executed by shareholders and duly returned to management and not revoked will be voted in accordance with the specification thereon, and in the absence of such specification, in favor of the proposed merger described below. Management knows of no other business to be presented for consideration at the meeting other than as stated in the notice of meeting. It is intended, however, that the persons named in the management proxies may vote in accordance with their judgment on any other proposal properly presented for action.

The Company will pay the cost of soliciting proxies in the accompanying form. The address of the principal executive office of the Company is 1540 Union Turnpike, New Hyde Park, New York 11040; its telephone number is (516) 328-7400. It is contemplated that this Proxy Statement, together with the accompanying form of proxy, will be mailed to shareholders on or about September 25, 1974.

INTRODUCTORY STATEMENT

In considering the proposed merger shareholders should take into account the following:

1. *Organization and Purpose of Newco.* Herbert N. Somekh, Chairman of the Board, President and founder of the Company, Charles Yaffe, Secretary and a Director of the Company and one of its founders, members of their families, and seven other persons associated with the Company, caused Newco to be formed on August 27, 1974 for the purpose of restoring the Company to a status of a privately held company which it occupied prior to its public offering in December, 1968. Such persons transferred to Newco all of the Company's Common Stock owned by them, constituting approximately 71.6% of such shares outstanding, in exchange for stock of Newco. See "Purpose and Background of Proposed Merger" [p. 2].

2. *Inability to Defeat Approval of Merger.* Newco owns more than the percentage of the Common Stock of the Company required to approve the merger and intends to vote such stock in favor of the merger. Accordingly, the other shareholders of the Company will be unable to defeat approval of the merger by voting against it and thus may either accept \$2.00 per share in cash or exercise their appraisal rights. See "Voting Rights and Vote Required" [p. 2], "Terms of the Proposed Merger" [p. 11] and "Rights of Dissenting Shareholders" [p. 12].

3. *Notice Required to Exercise Appraisal Rights.* A shareholder who desires to exercise his appraisal rights and to receive payment for the fair value of his shares is required to file with the Company before the vote of shareholders a written objection to the merger including a statement that he intends to demand payment for his shares if the merger is effected. A vote for adoption of the merger will constitute a waiver of a shareholder's appraisal rights, and a mere vote against the proposal without filing the requisite written objection is not considered sufficient. See "Rights of Dissenting Shareholders" [p. 12].

4. *Controlling Interest of Newco.* As a result of its ownership of 71.6% of the Common Stock of the Company, Newco has the power to control the policies and management of the

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Company. Three of the Company's five directors also constitute all of the directors and officers of Newco and two of such persons and their families own approximately 89.6% of Newco's common stock. See "Purpose and Background of Proposed Merger" [p. 2]. Accordingly, the negotiations concerning the terms and other aspects of the proposed merger cannot be considered to have been conducted at arm's length.

5. Board Approval Not Unanimous. The action of the Board of Directors of the Company in approving the proposed merger was not unanimous; Mr. Stanley D. Robinson, an independent director, dissented because he believes that the price of \$2.00 per share to be paid pursuant to the merger is not sufficient. All other directors voted in favor of the merger. See "Action of the Board of Directors" [p. 4]; and "Special Factors to be Considered" for information with respect to directors who voted in favor of the transaction [p. 4].

6. Per Share Data. The following table gives the Company's net earnings on a per share basis for the periods indicated and its net book value per share at the end of such periods. See "Per Share Data" [p. 5].

	For the Fiscal Years Ended					For the Thirty-Nine Weeks Ended	
	September 27, 1969 (52 Weeks)	October 3, 1970 (53 Weeks)	October 2, 1971 (52 Weeks)	September 30, 1972 (52 Weeks)	September 29, 1973 (52 Weeks)	June 30, 1973 (Unaudited)	June 29, 1974 (Unaudited)
Net earnings (loss)	\$.54	(\$.22)	(\$.37)	\$.25	\$.50	\$.43*	\$.16
Net book value	\$3.90	\$3.68	\$3.32	\$3.56	\$4.10	\$4.00	\$4.45

* See Note 1 to "Per Share Data" [p. 5].

7. Termination of the Plan of Merger. The Plan of Merger may be terminated and the merger abandoned by action of either the Board of Directors of the Company or the Board of Directors of Newco. See "Terms of Proposed Merger" [p. 11].

VOTING RIGHTS AND VOTE REQUIRED

Under the Business Corporation Law of the State of New York the affirmative vote of at least two-thirds of the outstanding shares of Common Stock of the Company is required for approval of the merger. As indicated above, Newco owns more than the number of shares of the Company's Common Stock required for approval of the merger and intends to vote its shares in favor of the merger. Accordingly, other shareholders of the Company will be unable to defeat approval of the merger by voting against it.

Only shareholders of record at the close of business on September 14, 1974 will be entitled to vote at the meeting. At that date the Company had outstanding and entitled to vote at the meeting 938,946 shares of Common Stock, each share of Common Stock being entitled to one vote. On the record date, Newco owned beneficially 672,196 shares (constituting approximately 71.6%) of the Company's outstanding Common Stock. Other than the shareholders of Newco (whose shares had not been transferred of record to Newco at the record date) no person owned of record and insofar as is known to the Company and excluding beneficial interests of shareholders of Newco through shares owned by it (see "Purpose and Background of Proposed Merger" [p. 2]), no person other than Newco owned beneficially more than 10% of the outstanding stock of the Company.

PURPOSE AND BACKGROUND OF PROPOSED MERGER

The proposed merger is intended to restore the Company to the status of a privately held company which it occupied prior to its public offering in December, 1968. Newco was formed on August 27, 1974 for the purpose of accomplishing this result through the proposed merger and it has acquired from its shareholders an aggregate of 672,196 shares of the Company's Common Stock, approximately 71.6% of the shares outstanding. The shareholders of Newco consist of Herbert N. Somekh, Chairman of

the Board, President and founder of the Company, his wife and trusts for the benefit of their children, Charles Yaffe, Secretary and a director of the Company and one of its founders, and his wife, and seven other persons who have been associated with and have been shareholders of the Company since prior to the public offering.

Each shareholder of Newco transferred all of his shares in the Company to Newco in exchange for an equivalent number of shares of Newco Common Stock. The following table sets forth, with respect to each shareholder of Newco, the number of the Company's shares transferred by him to Newco, the approximate percentage such shares represented of the Company's outstanding Common Stock and the approximate percentage of Newco's outstanding Common Stock owned by him (which will be the approximate percentage owned by him in the Company after the merger).

<u>Shareholder</u>	<u>No. of Shares Transferred to Newco</u>	<u>Percentage of Company Shares Represented</u>	<u>Percentage of Newco Shares Held</u>
Herbert N. Somekh	256,056	27.2	38.0
Denise D. Somekh*	197,644	21.0	29.3
Herbert Somekh, as Trustee of Trusts for the Benefit of his Children	124,800	13.2	18.5
Charles Yaffe	10,995	1.1	1.6
Beulah Yaffe*	12,995	1.3	1.9
Carl Appel*	8,506	.9	1.2
Esther Appel*	8,506	.9	1.2
Lawrence Appel*	19,985	2.1	2.9
Florence Mukamal*	5,498	.5	.8
Arthur Gold	15,526	1.6	2.3
Stanley Kuschner	8,685	.9	1.3
Harold Slone	3,000	.3	.4

*Denise D. Somekh is the wife of Herbert N. Somekh and Beulah Yaffe is the wife of Charles Yaffe. Carl and Esther Appel are husband and wife and Lawrence Appel and Florence Mukamal are their son and daughter.

If the proposed merger is consummated, the shareholders of Newco will be entitled to the benefit of all of the assets, earnings, earning capacity and cash flow of the Company. The merger will make possible a combination of the resources of the Company with those of Mr. Somekh (who with his wife and trusts for the benefit of his children, owns approximately 86% of the stock of Newco) for the conduct of real estate activities of the type that Mr. Somekh has to date conducted individually (primarily development of garden apartments). Such a combination is presently being contemplated.

Several of the shareholders of Newco are executives of the Company who will approach retirement age in the next few years. The Company at present has no pension or retirement plan for its executives. If the merger is consummated, it will be feasible for the Company as a private company to make arrangements which will couple retirement payments to such persons with payments for redemption of stock and to make other arrangements for redemption of stock. While it is likely that such arrangements will be made at some time, there have been no determinations with respect thereto.

ACTION OF THE BOARD OF DIRECTORS

The Board of Directors of the Company voted on August 29, 1974 to approve the merger with Newco in the light of the very limited market for the Company's shares and the inherent costs and disadvantages of continuing as a public company. The Board of Directors consists of five directors: Messrs. Herbert N. Somekh, Charles B. Yaffe, David N. David and Neil B. Persky voted in favor of the merger, while Mr. Stanley D. Robinson voted against the merger. See "Special Factors to be Considered—Control" [p. 4].

While the Company's Common Stock is listed on the American Stock Exchange, trading activity has been insubstantial and since July, 1973 has been extremely sparse. The Company's Common Stock was traded on only 115 of the 285 trading days on which the Exchange was open for trading during the period from July 1, 1973 to August 15, 1974 and the trading volume of the Company's Common Stock during such period averaged about 735 shares per week. There appears to be only a limited demand for the Company's Common Stock and in the light of the trading history during this period, the nature of the Company's business and other factors (including the prospects of the Company and its industry, and the size of the Company and the number of shares outstanding and publicly held), there appears to be no reason to believe that this demand will increase substantially in the foreseeable future.

On the other hand, there are significant costs inherent in operating as a public company, which include legal and accounting fees, printing costs, fees paid to its transfer agent and stock exchange listing fees. In addition, management time must be devoted to such matters as compliance with reporting requirements under the Federal securities laws and communications to and relations with the Company's public shareholders. Moreover, in the case of a privately held company, unanimous consent of shareholders can often be readily obtained when called for, and in any event shareholder action can be obtained quickly and without the necessity and expense of preparing proxy material.

The Board of Directors of the Company (with, as noted previously, one dissent) believes that the price of \$2.00 per share to be paid to shareholders upon the merger is fair. In reaching that conclusion, the Board considered the financial position, earnings and prospects of the Company and other factors (including current economic conditions, the general outlook for the hosiery industry and the limited alternatives for utilization of the Company's stores and assets), and the opinions of two investment banking firms as to the fair value of the Company's Common Stock. Thomson & McKinnon Auchincloss Kohlmeyer Inc. advised the Company on August 29, 1974 that in the opinion of such firm the value of the Common Stock is between \$1.70 and \$1.85 per share. Foster Securities Corporation advised the Company on August 28, 1974 that the value of such stock was between \$1.20 and \$1.30 per share. In connection with the analyses prepared by these firms, the Company has agreed to pay fees of \$12,640 to Thomson & McKinnon Auchincloss Kohlmeyer Inc. and \$5,000 to Foster Securities Corporation. The firm of Auchincloss, Parker & Redpath, a predecessor of Thomson & McKinnon Auchincloss Kohlmeyer Inc., was the managing underwriter for the Company's public offering in December, 1968.

Mr. Stanley D. Robinson voted against the transaction because he believes that the price of \$2.00 per share to be paid pursuant to the merger is not sufficient to make the transaction in the interests of all shareholders.

SPECIAL FACTORS TO BE CONSIDERED

1. Control

Herbert N. Somekh, with his wife and trusts for his children, owns 578,500 shares of Newco representing approximately 86.1% of its outstanding stock and, prior to the organization of Newco, owned an identical number of shares of the Company's Common Stock, representing approximately 61.6% of the shares outstanding. As a result of such stock ownership, Mr. Somekh has and has had the power to control the policies and management of the Company. Mr. Somekh and Mr. Charles Yaffe, who with his wife owns 23,990 shares of Newco Common Stock and prior to the organization of Newco owned an equivalent number of shares of the Company's Common Stock, are two of the directors of the Company.

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Of the other two directors who voted in favor of the merger, one, Mr. Neil B. Persky, is Executive Vice President and Treasurer of the Company, and the other, Mr. David N. David, although not an employee of the Company, is Mr. Somekh's brother-in-law.

2. Purchases of Stock

During the period from June 5, 1973 to July 30, 1974, the Company purchased an aggregate of 121,054 shares of its Common Stock in the open market or in private purchases at prices per share which ranged from \$3.38 in June, 1973 to \$1.00 in June, 1974 and averaged \$2.46. Such purchases included the purchase on December 19, 1973 at a price of \$2.70 of 24,000 shares from Charles F. Milner, Jr., who until his resignation on August 9, 1974, to become the chief executive officer of another company, was Executive Vice President, General Manager and a director of the Company. Since May 22, 1974, no shares have been purchased by the Company at a price of more than \$2.00 per share, and the last significant purchase by the Company occurred on June 28, 1974, when 28,004 shares were purchased at an average price of \$1.25 per share.

3. 1968 Public Offering

In December, 1968, the Company sold to the public 300,000 shares of its Common Stock at a price of \$9 per share. As a result, the book value of shares of the Company's Common Stock held prior to the public offering (including those held by Mr. Somekh and other persons now shareholders of Newco) was increased (based upon the Company's shareholders' equity at June 29, 1968) from \$1.54 to \$3.39 per share.

PER SHARE DATA

The following table presents data relating to the earnings of the Company on a per share basis. The table is based upon the consolidated financial statements of the Company and subsidiaries included elsewhere herein (reference is made to such statements for more detailed financial information).

	For the Fiscal Years Ended					For the Thirty-Nine Weeks Ended	
	September 27, 1969	October 3, 1970	October 2, 1971	September 30, 1972	September 29, 1973	June 30, 1973	June 29, 1974
	(52 Weeks)	(53 Weeks)	(52 Weeks)	(52 Weeks)	(52 Weeks)	(Unaudited)	(Unaudited)
Earnings (loss) per share of common stock:							
Before extraordinary item	\$54	(\$22)	(\$29)	\$38	\$44	\$43(1)	\$16
Extraordinary item	—	—	(.08)	(.13)	.06	—	—
Total	<u>\$54</u>	<u>(\$22)</u>	<u>(\$37)</u>	<u>\$25</u>	<u>\$50</u>	<u>\$43(1)</u>	<u>\$16</u>
Average number of common shares outstanding	<u>987,500</u>	<u>1,050,000</u>	<u>1,050,000</u>	<u>1,050,000</u>	<u>1,056,488</u>	<u>1,057,211</u>	<u>989,225</u>

As of September 29, 1973 and June 29, 1974 the net book value per outstanding share of Common Stock of the Company was \$4.10 and \$4.45, respectively.

The Company has never paid a dividend.

1. As described in Note A(3) of the Notes to Consolidated Statement of Earnings (Loss) [p. 8], if the acquisition by the Company of Neumode Hosiery Co., which occurred on October 11, 1973, had taken place on October 1, 1972, per share earnings for the thirty-nine weeks ended June 30, 1973 would have been \$.22.

CAPITALIZATION OF THE COMPANY

The capitalization of the Company as at June 29, 1974 and pro forma after giving effect to the merger as if it had occurred on such date is as follows:

Debt:	<u>June 29, 1974</u>	<u>Pro Forma</u>
Short-Term Loans, Notes, Etc.:		
Current Portion of Long-Term Debt	\$ 83,215	\$ 83,215
10¾% Note Payable-Bank due January 2, 1975	500,000	500,000
12¾% Note Payable-Bank due January 3, 1975	250,000	250,000
Long-Term Debt (Excluding Portion Due Within One Year):		
6% Convertible Subordinated Note Payable \$4,375 monthly beginning in January, 1973 (less current portion of \$52,500)	288,750	288,750
6½% Mortgage Payable (less current portion of \$5,400)	56,687	56,687
Notes Payable-Other (less current portion of \$25,315)	91,500	91,500
Total debt	<u>\$1,270,152</u>	<u>\$1,270,152</u>
Stockholders' equity:		
Preferred stock—par value \$5 per share		
Authorized—300,000 shares; outstanding—none		
Common stock—par value \$.50 per share		
Authorized—3,000,000 shares, outstanding—1,060,000 shares prior to the merger, including 120,754 shares held in treasury; 672,196 shares after the merger (Note 1)	\$ 530,000	\$ 336,098
Capital in excess of par value	2,287,187	1,649,625
Retained earnings	1,657,201	1,657,201
	<u>\$4,474,388</u>	<u>\$3,642,924</u>
Less: Treasury stock—at cost	297,364	—
Total Stockholders' Equity	<u>\$4,177,024</u>	<u>\$3,642,924</u>
Total Capitalization	<u>\$5,447,176</u>	<u>\$4,913,076</u>

1. See Notes 2 and 3 of Notes to Consolidated Financial Statements for information relating to shares reserved for issuance upon conversion of an outstanding note and exercise of outstanding qualified stock options. Subsequent to June 29, 1974, the Company and the holders of all outstanding qualified stock options have agreed to cancel the same.

2. See Note 4 of Notes to Consolidated Financial Statements for information relating to the Company's lease obligations.

0000510

PARKLANE HOSIERY COMPANY, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF EARNINGS (LOSS)

The following consolidated statement of earnings (loss) of Parklane Hosiery Company, Inc. and subsidiaries for the five years ended September 29, 1973 has been examined by Clarence Rainess & Co., independent certified public accountants, whose report appears elsewhere herein. This statement should be read in conjunction with the accountants' report, other financial statements and the notes to consolidated financial statements which are included elsewhere herein. The unaudited statements for the thirty-nine weeks ended June 30, 1973 and June 29, 1974 include all adjustments which consisted of normal recurring accruals, considered by management necessary for the fair presentation of earnings for the period. Net sales and net earnings for the thirty-nine weeks ended June 29, 1974 are not necessarily indicative of the results of operations for the full fiscal year.

	For the Fiscal Years Ended					For the Thirty-Nine Weeks Ended	
	September 27, 1969 (52 Weeks)	October 3, 1970 (53 Weeks)	October 2, 1971 (52 Weeks)	September 30, 1972 (52 Weeks)	September 29, 1973 (52 Weeks)	June 30, 1973 (Unaudited)	June 29, 1974 (Unaudited)
Sales	\$13,672,367	\$16,660,153	\$18,276,337	\$21,269,210	\$24,173,250	\$18,916,163	\$22,449,304
Cost of sales—Note B	7,060,845	8,860,889	9,408,526	10,865,905	12,010,384	9,512,253	11,224,108
Gross profit on sales	6,611,522	7,799,264	8,867,811	10,403,305	12,162,866	9,403,910	11,225,196
Operating expenses:							
Store, general and administrative expenses	4,063,394	5,847,429	6,615,727	6,555,015	7,755,127	5,735,757	7,499,030
Rents	1,352,289	1,867,937	2,101,185	2,421,072	2,770,952	2,232,012	2,822,721
Depreciation and amortization	267,829	394,612	494,021	559,776	632,531	457,300	540,249
Interest	(52,140)	26,894	125,149	67,024	23,443	24,430	25,310
	5,631,372	8,136,872	9,336,082	9,602,887	11,182,053	8,449,499	10,887,310
	980,150	(337,608)	(468,271)	800,418	980,813	954,411	337,860
Other income (deductions):							
Loss on disposition of property and equipment	—	—	—	—	(108,967)	(83,219)	(52,349)
Other	6,432	6,852	(10,817)	27,164	42,337	32,110	26,859
	6,432	6,852	(10,817)	27,164	(66,630)	(51,109)	(25,490)
Earnings (loss) before taxes and extraordinary items	986,582	(330,756)	(479,088)	827,582	914,183	903,302	312,396
Provision for (recovery of) taxes based on income—Notes C and 1..	453,905	(99,362)	(180,790)	425,000	448,000	452,000	153,000
Earnings (loss) before extraordinary items	532,677	(231,394)	(298,298)	402,582	466,183	451,302	159,396
Extraordinary items—net—Note A	—	—	(87,025)	(141,468)	57,000	—	—
Net earnings (loss)	\$ 532,677	\$ (231,394)	\$ (385,323)	\$ 261,114	\$ 523,183	\$ 451,302	\$ 159,396
Net earnings (loss) per share of common stock—Note D:							
Earnings (loss) before extraordinary items	\$.54	(\$.22)	(\$.29)	\$.38	\$.44	\$.43	\$.16
Extraordinary items	—	—	(.08)	(.13)	.06	—	—
Net earnings (loss)	\$.54	(\$.22)	(\$.37)	\$.25	\$.50	\$.43	\$.16
Average number of common shares outstanding	987,500	1,050,000	1,050,000	1,050,000	1,056,488	1,057,211	989,225
Number of stores at end of period	193	255	291	316	330	364	445

Alphabetical note references refer to Notes to the Statement of Consolidated Earnings (Loss).

Numerical note references refer to Notes to Consolidated Financial Statements.

PARKLANE HOSIERY COMPANY, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED STATEMENT OF EARNINGS (LOSS)

NOTE A—Principles of Consolidation, Acquisition

(1) The consolidated financial statements include the accounts of the Company and all of its subsidiaries. All significant intercompany items have been eliminated.

(2) The acquisition on September 30, 1972 of Corsetorium Service Co., Inc. and subsidiaries, a group of twelve retail stores, for \$525,000 has been accounted for by using the "purchase" method of accounting.

The following is a summary of the pro forma results of operations for the year ended September 30, 1972 assuming that the acquisition had taken place as at October 3, 1971:

Total revenues	\$23,314,000
Income before extraordinary items	408,000
Net income	246,000
Per share:	
Income before extraordinary items	\$.39
Net income	.23

(3) On October 11, 1973 the Company acquired all the issued and outstanding stock of Neumode Hosiery Co., a group of 91 retail stores, for \$352,500. This acquisition has been accounted for by using the "purchase" method of accounting. Neumode Hosiery Co. has annual sales of approximately \$7,100,000 and operated at a loss prior to its acquisition by the Company. In the opinion of management the results of prior years are not indicative of the expected future operations.

The following summary of pro forma results of operations of the Company for the thirty-nine weeks ended June 30, 1973 assumes the acquisition had taken place as of October 1, 1972:

Total revenues	\$23,528,000
Net income	232,000
Per share	\$.22

Companies acquired by purchase in 1972 and 1973 are included in consolidation from the respective acquisition dates.

(4) Extraordinary income in 1973 of \$57,000 resulted from a reduction in current taxes arising from the use of the balance of prior years' net operating loss carryforwards.

The 1972 extraordinary loss of \$141,468 (after tax reduction of \$150,000) resulted from the disposition of 31 closed stores. The loss includes estimated costs anticipated upon disposition of fixtures and equipment and a provision for future lease payments on the closed stores necessary to terminate the commitments under such lease obligations. Provision for loss on store closings, included under miscellaneous accrued liabilities on the balance sheet at September 29, 1973, is tabulated as follows:

Provision for lease termination	\$36,331
Provision for losses on disposition of fixtures and equipment	30,944
	<u>\$67,275</u>

The 1971 extraordinary loss resulted from the discontinuance of a warehousing and purchasing operation.

NOTES TO CONSOLIDATED STATEMENT OF EARNINGS (LOSS)—Continued

NOTE B—Inventories

The inventories used in computing cost of sales are as follows:

	For the Fiscal Years Ended					For the Thirty-Nine Weeks Ended	
	September 27, 1969 (52 Weeks)	October 3, 1970 (53 Weeks)	October 2, 1971 (52 Weeks)	September 30, 1972 (52 Weeks)	September 29, 1973 (52 Weeks)	June 30, 1973 (Unaudited)	June 29, 1974 (Unaudited)
Beginning of period	\$2,065,233	\$2,984,887	\$3,291,405	\$2,420,121	\$2,647,438	\$2,647,438	\$3,368,814
End of period	2,984,887	3,291,405	2,420,121	2,647,438	3,368,814	2,515,000	4,304,000

NOTE C—Taxes

Provision for (recovery of) taxes based on income:

(1) The provision for (recovery of) taxes based on income consists of:

	For the Fiscal Years Ended					For the Thirty-Nine Weeks Ended	
	September 27, 1969 (52 Weeks)	October 3, 1970 (53 Weeks)	October 2, 1971 (52 Weeks)	September 30, 1972 (52 Weeks)	September 29, 1973 (52 Weeks)	June 30, 1973 (Unaudited)	June 29, 1974 (Unaudited)
Taxes—current:							
State and local	\$ 66,550	\$ 23,000	\$ —	\$ 35,000	\$ 60,000	\$ 48,000	\$ 23,000
Federal	357,700	(163,000)	(53,150)	—	249,000	374,000	120,000
Portion credited to extraordinary items ..	—	—	52,774	—	57,000	—	—
Current portion ..	424,250	(140,000)	(376)	35,000	366,000	422,000	143,000
Taxes—deferred:							
Accelerated depreciation	29,655	40,638	44,519	22,000	5,966	5,000	5,000
Tax benefits of operating losses	—	—	(224,933)	218,000	6,933	—	—
Portion credited to extraordinary items ..	—	—	—	150,000	—	—	—
Investment credit	—	—	—	—	99,601	25,000	5,000
Post death compensation	—	—	—	—	2,500	—	—
Reserve for future losses on closed stores	—	—	—	—	(33,000)	—	—
Deferred portion ..	29,655	40,638	(180,414)	390,000	82,000	30,000	10,000
Totals	\$ 453,905	\$ (99,362)	\$ (180,790)	\$ 425,000	\$ 448,000(*)	\$ 452,000	\$ 153,000

(*) The federal income tax expense for the fiscal year ended September 29, 1973 is approximately \$23,000 less than the statutory 48% rate due to the surtax exemption and the utilization of approximately \$18,000 of investment credits.

NOTES TO CONSOLIDATED STATEMENT OF EARNINGS (LOSS)—Continued

(2) Investment credits—In fiscal years ending prior to October 3, 1970, the Company followed the "flow-through" method of accounting for investment tax credits. For the fiscal year ended September 29, 1973, the Company has adopted the preferred policy of accounting for these credits by amortizing the realized amounts over the lives of the related assets. Because of losses incurred in prior years, the effect of this change on the income of those years is not significant. Had the Company followed its former method of accounting for investment tax credits, reported income before extraordinary items and net income for the current fiscal year ended September 29, 1973 would have been approximately \$99,000 greater. The related per share amounts would have been increased by \$.09 per share.

(3) The Company files a consolidated income tax return with its subsidiaries.

NOTE D—Earnings (Loss) Per Common Share

Earnings (loss) per share of common stock are based on the average number of common shares outstanding during the year. Stock options have no material dilutive effect on earnings per share in any year, assuming purchases of common stock at average market prices, with proceeds that would be received upon exercise of such options.

The Company's earnings for the thirty-nine week period ended June 29, 1974 were adversely affected by a slackening in the demand for hosiery products. As a result, the Company was unable to increase its sales and gross profits to compensate for increased operating costs and in fact per store revenues declined during the period. Operating costs during the period increased and profits declined because of inflation, added administrative costs required during the period to effect the integration of the Neumode stores acquired at the beginning of the period into the Company's operations and a fire at the Company's principal office in January, 1974.

PRICE RANGE OF COMMON STOCK

The Company's Common Stock has been listed on the American Stock Exchange since July 28, 1969 and the prices set forth below are as reported by that Exchange:

	<u>High</u>	<u>Low</u>
1969 (from July 28)	\$14 $\frac{1}{8}$	\$7
1970	11 $\frac{7}{8}$	3 $\frac{3}{8}$
1971	8 $\frac{1}{2}$	3 $\frac{3}{8}$
1972		
First Quarter	6 $\frac{3}{8}$	4 $\frac{3}{4}$
Second Quarter	5 $\frac{7}{8}$	4 $\frac{5}{8}$
Third Quarter	5 $\frac{5}{8}$	4 $\frac{7}{8}$
Fourth Quarter	5 $\frac{3}{4}$	4 $\frac{5}{8}$
1973		
First Quarter	6 $\frac{3}{8}$	3 $\frac{3}{4}$
Second Quarter	3 $\frac{3}{4}$	2 $\frac{3}{4}$
Third Quarter	3 $\frac{3}{8}$	2 $\frac{3}{4}$
Fourth Quarter	3 $\frac{1}{4}$	2
1974		
First Quarter	2 $\frac{7}{8}$	2 $\frac{1}{8}$
Second Quarter	2 $\frac{3}{8}$	1 $\frac{1}{4}$
Third Quarter (through August 28, 1974)	1 $\frac{3}{8}$	1

On August 27, 1974, the last day on which the Common Stock was traded before the announcement of the proposed merger, the closing price of the Company's Common Stock on the American Stock Exchange was \$1 $\frac{3}{8}$. On September 23, 1974, such closing price was \$1 $\frac{3}{4}$.

TERMS OF THE PROPOSED MERGER

The terms of the merger are set forth in the Plan of Merger between the Company and Newco which has been approved by the Board of Directors of the Company and by the Board of Directors and shareholders of Newco. The following summary does not purport to be complete and reference is made to the Plan of Merger attached hereto as Exhibit A.

Pursuant to the terms of the Plan of Merger, (a) the holders of record of the outstanding Common Stock of the Company (other than Newco) will receive \$2.00 in cash for each share of Common Stock of the Company held by them, or an aggregate cash consideration of \$533,500, (b) the shares of Common Stock held by Newco will be cancelled, and (c) the shareholders of Newco will receive one share of the Company's Common Stock for each Newco share held.

When approved by the shareholders, the merger will become effective on or about October 14, 1974. After the merger becomes effective, the shareholders of the Company, other than Newco, will be mailed a letter of transmittal and can thereafter receive the amounts payable with respect to their shares by transmitting their stock certificates, together with the signed letter of transmittal, to the bank designated therein as exchange agent. There will be no expense or commission charge to the shareholders in connection with the surrender of their stock certificates and payment of the merger price.

Upon consummation of the merger, the present holders of the outstanding shares of the Company's Common Stock will cease to be shareholders of the Company and will have no voting or other rights with respect to such shares, except the right to receive the amounts payable with respect to such shares in accordance with the terms of the Plan of Merger, without interest thereon, upon surrender of their

certificates or, in the case of dissenting shareholders, in accordance with the provisions described "Rights of Dissenting Shareholders" [p. 12].

The Plan of Merger provides that it may be terminated and the merger provided for therein may be abandoned at any time prior to the filing of such documents as may be required under the Business Corporation Law of New York, whether before or after the approval by the shareholders of the Company and Newco, without liability on the part of either of such corporations or their respective directors, officers or shareholders, by action of either the Board of Directors of the Company or the Board of Directors of Newco.

Under the agreement relating to the Company's outstanding bank loans, consent of the bank is required for the merger, but has not yet been sought nor received.

As noted above, approximately \$533,500 will be required for payments to shareholders (other than Newco) on the merger. It is anticipated that a portion of such funds will come from profits from the fiscal quarter commencing October 1, 1974 which is traditionally the strongest period for the Company's business (see "Business of the Company—Sales and Distribution" [p. 13]) but that the major portion will be generated by reduction of inventories from the level which prevailed on June 29, 1974. See "Consolidated Balance Sheet" [p. F-3] for the information as to inventory and cash of the Company June 29, 1974 and September 30, 1973.

RIGHTS OF DISSENTING SHAREHOLDERS

Sections 910 and 623 of the Business Corporation Law of the State of New York contain provisions which grant to dissenting shareholders of a New York corporation involved in a merger who comply with the procedures specified in such Sections the right to receive payment in cash of the fair value of their shares. Set forth below is a summary of such Sections. Reference is made to such Sections, copy of each of which is attached as Exhibit B, for a complete statement of the rights and obligations of dissenting shareholders.

A shareholder who desires to object to the merger and to receive payment for the fair value of his shares must file with the corporation, before the meeting of shareholders to authorize the merger or at such meeting but before the vote, written objection to the merger including a statement that he intends to demand payment for his shares if the merger is effected. The Company's position is that a negative vote on the merger does not constitute the written objection required to be filed by an objecting shareholder. Failure to vote against the merger, however, will not constitute a waiver of rights under Sections 910 and 623 provided that a written objection has been properly filed. A vote for adoption of the merger will, however, constitute such a waiver.

Within 10 days after the date of the shareholders' vote authorizing the merger, the corporation must give written notice by registered mail of such authorization to each shareholder who filed written objection to the merger and did not vote in favor thereof. The Company intends to give such written notice. Within 20 days after the giving of such notice, any such shareholder who elects to dissent must file with the corporation a written notice of such election, stating his name and residence address, the number and class of shares of stock as to which he dissents and a demand for payment of the fair value of his shares. Such shareholder may not dissent as to less than all his shares. At the time of filing his notice of election to dissent or within one month thereafter, the shareholder must submit the certificates representing his shares to the corporation or its transfer agent for notation thereon of the election to dissent, after which such certificates will be returned to the shareholder. Failure to submit the certificates may result in the loss of dissenter's rights. Within seven days after the expiration of the period within which shareholders may file their notices of election to dissent, or within seven days after consummation of the merger, whichever is later (but not later than 90 days after the shareholders' vote authorizing the merger), the corporation must make a written offer by registered mail (which, if the merger has not been consummated, may be conditioned upon such consummation) to each shareholder who has filed such notice of election to pay for his shares at a specified price which the corporation considers to be their fair value. If the corporation and the dissenting shareholder are unable to agree as to such value, Section 623 provides for judicial determination of value.

FEDERAL INCOME TAX CONSEQUENCES

The Company has been advised by its counsel, Kaye, Scholer, Fierman, Hays & Handler, that the Federal income tax consequences of the merger will be as follows:

The exchange of the Company's stock for cash upon the effectiveness of the proposed merger will be treated as a sale of stock. An exchanging shareholder (other than a dealer in the Company's stock) will recognize capital gain or loss measured by the difference between such shareholder's cost or other basis for the Company's stock and \$2.00. The gain or loss will be long-term if the holding period is in excess of six months.

Under provisions added to the Internal Revenue Code by the Tax Reform Act of 1969 a portion (one-half in the case of individuals) of long-term capital gain will constitute an item of tax preference. A shareholder's items of tax preference may be subject to a minimum tax which, in the case of individuals, is generally equal to 10% of the amount, if any, by which all of the shareholder's items of tax preference for the taxable year exceed the sum of \$30,000, the Federal income tax otherwise payable in respect of such taxable year and certain amounts of Federal income tax paid in prior taxable years that ended after December 31, 1969 which were not offset against items of tax preference for such taxable years. Furthermore, to the extent that the amount of a shareholder's items of tax preference for the year (or average items of tax preference for the taxable year and the preceding four taxable years) exceed \$30,000, the amount of the shareholder's income which qualifies for the 50% maximum rate on earned income will be reduced.

Shareholders should consult their own tax advisers as to the Federal, state, local or foreign tax consequences to them of the merger.

BUSINESS OF THE COMPANY

The Company, which was incorporated in 1955 under the laws of the State of New York, is principally engaged in the retailing throughout the United States at popular prices of first quality (i) women's hosiery products (including both stockings and pantyhose), (ii) body suits and tops, and (iii) leotards, tights and other dancing and exercise apparel.

Sales and Distribution

All of the Company's hosiery products and a majority of the Company's body suits and tops are sold under the Parklane trademark which the Company considers to be of material importance to its business. A majority of the leotards and tights and other dancing apparel sold by it are purchased from Danskins, Inc. (formerly known as Triumph Hosiery Mills), and are sold by the Company under the "Danskin" label.

The Company presently operates 444 stores in 41 states and Puerto Rico, located primarily in major metropolitan areas and their suburbs. In addition to its own outlets, the Company has granted franchises without cost to individuals and independent corporations. These franchisees are permitted to use the Parklane name and packaging on all items of apparel purchased from the Company.

The following table gives the number of store openings and closings during the periods ending as of the dates indicated:

	Fiscal Years Ended					Thirty-Nine Weeks Ended
	September 27, 1969	October 3, 1970	October 2, 1971	September 30, 1972	September 29, 1973	June 29, 1974
Opened	55	65	59	32	24	10
Closed	4	3	15	31	13	14

In addition, during the thirty-nine weeks ended June 29, 1974, the Company acquired 91 Neumode Hosiery Co. stores, opened 1 additional, and closed 12.

As of June 29, 1974, there were 40 franchise outlets in operation in California, Colorado, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Puerto Rico and Hawaii. During the year ended September 29, 1973, the cost of goods shipped to franchisees and of related expenses amounted to approximately \$1,003,000 and franchise revenues accounted for approximately 4.4% of the Company's operating revenues.

As is the case with most retailers, the Company's sales have traditionally been highest in its quarter, from October through December, because of the Christmas season.

Other Stores

In addition to the items of women's apparel referred to above, the Company also sells in its Pa stores certain related women's accessories, such as gloves, scarves and costume jewelry.

The Company owns and operates 11 "Expressions" stores which offer a line of jeans and ready-to-wear clothing, posters, executive games, candles, sunglasses and other gift items, some of which are sold under the Company's own name, and others are sold under brand names.

The Company owns and operates 13 Corsetorium stores in the New York metropolitan area which sell bras, girdles, lingerie and swimwear, as well as hosiery and body suits.

Product Classes

During the fiscal year ended September 30, 1972, hosiery items accounted for approximately 17.6% of the Company's sales, while leotards, tights and dancing and exercise apparel accounted for approximately 7% of the Company's sales. During the fiscal year ended September 29, 1973, hosiery accounted for approximately 58% of the Company's sales, while body suits accounted for approximately 15.5% of the Company's sales, and leotards, tights and dancing and exercise apparel accounted for approximately 18% of the Company's sales. For the current fiscal year, it is expected that the percentage of the Company's sales accounted for by hosiery will decline to approximately 43%, the percentage accounted for by body suits will remain at approximately 15%, and the percentage accounted for by leotards, tights and dancing and exercise apparel will increase to approximately 28%.

Suppliers

The Company's primary supplier of hosiery items during the twelve months ended June 29, 1974 was Burlington Hosiery Co., a division of Burlington Industries, Inc., which accounted for approximately 53% of the Company's hosiery requirements. In addition, during the same period, the Company purchased approximately 23%, 11% and 11% of its hosiery requirements from Morganton Hosiery Co., a division of Dan River, Inc., Pennaco, a division of U.S. Industries, Inc. and Bear Brand Hosiery Co., respectively. The Company's principal supplier of body suits during the twelve months ended June 29, 1974, was Tricnit Industries, Inc., which accounted for approximately 44% of the Company's body suit requirements. No other supplier accounted for at least 10% of the Company's body suit requirements during such period.

The Company's principal supplier of leotards, tights and other dancing and exercise apparel during the twelve months ended June 29, 1974 was Danskins, Inc. which accounted for approximately 44% of the Company's requirements for these products.

With the exception of an agreement with Bear Brand Hosiery Co., which provides for the purchase of hosiery products from that company for a period ending in 1976, at prices competitive with those available to the Company, the Company has no significant long-term purchase contracts with its suppliers. To date the Company has experienced no serious difficulty in obtaining sufficient quantities of its requirements to meet its needs and anticipates no difficulty in obtaining its future requirements as in most cases alternative sources of supply of comparable quality are readily available.

Competition

Many retail stores, no one of which is dominant, are in competition with the Company in price, product quality and service. The products sold by the Company are purchased by the Company from top quality manufacturers and are considered by the Company to be of first quality in comparison to similar products sold by others. Hosiery is sold in department stores, large ready-to-wear chains, discount stores, supermarkets, variety stores and drug stores; body suits, tops, leotards, tights and other dancing and exercise apparel, are sold by the same stores, except supermarkets which do not generally sell these products. With respect to product quality and service, the Company competes favorably with department stores and large ready-to-wear chains. Large chain stores and supermarkets purchase lower priced hosiery products than purchased by the Company, and as a result price competition with such stores has been unfavorable to date.

Employees

As of July 1, 1974, the Company employed approximately 950 regular and 640 part-time employees, of whom approximately 60 were engaged in executive or administrative operations, 36 were engaged in clerical operations, and the balance were sales personnel. Approximately 54 employees of the Company's Corsetorium stores are covered under a labor agreement with the Amalgamated Clothing Workers of America which expires in 1975.

Properties

The Company's principal executive offices are located at 1540 Union Turnpike, New Hyde Park, New York. These premises, which consist of 26,000 square feet, are leased to the Company at an annual rental of \$58,820 (exclusive of certain real estate taxes) under a lease which expires on January 31, 1979 with an option to renew for an additional five year period.

In accordance with the Company's present policy the premises of most stores operated by it are leased. Such store leases typically allow for rental payments based upon a percentage of gross sales, generally between 7% and 10%, with a guaranteed minimum annual rent, plus the cost of insurance, maintenance and increases in real estate taxes. In addition, where stores are located in shopping centers, the Company also usually pays a pro rata share of general common area costs and Merchant Association charges.

At June 29, 1974, the Company was obligated under 454 leases which expire at various dates from 1974 through 1999. The total minimum annual rentals payable by the Company under such leases were approximately \$3,292,000 (exclusive of certain real estate taxes, operating expenses and other assignments).

The Company owns a building in Grand Rapids, Michigan, which contains approximately 7,500 square feet which is partly used by the Company as a store and partly sublet. The Company also is the owner of a building in Trenton, New Jersey, which was destroyed by fire in March, 1974. The Company is currently engaged in restoring this building to a one story structure containing approximately 2,500 square feet which when restored will be partly used by the Company as a store and partly sublet. The Company also has a 22% interest in a 9,180 square foot building in Pittsburgh, Pennsylvania, in which one of its stores is located.

The Company also pays rent on 22 stores transferred to certain franchisees during 1972 until their respective leases expire. Such rent is charged by the Company to the franchisee. Early this year, the Company received a substantial offer with respect to a property, part of which is occupied by a franchisee and the balance by another sublessee, for the assignment of the Company's lease and the cancellation of the rights of the occupants. On the basis of negotiations with the franchisee and other subtenant, the amount which would have been required to be paid to them would have represented substantially all of the sum offered. The offer has been withdrawn and there are no negotiations at present. The Company is unable to determine if another offer will be made.

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REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the Board of Directors

PARKLANE HOSIERY COMPANY, INC.

We have examined the consolidated balance sheet of Parklane Hosiery Company, Inc. and subsidiaries as at September 29, 1973 and the related consolidated statements of earnings (loss), capital in excess of par value and retained earnings for the five years then ended and changes in financial position for the three years then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the aforementioned consolidated financial statements present fairly the financial position of Parklane Hosiery Company, Inc. and subsidiaries as at September 29, 1973, the results of their operations for the five years then ended and changes in financial position for the three years then ended, in conformity with generally accepted accounting principles consistently applied, except for the change in accounting for investment tax credits, with which we concur, as set forth in Note C of the notes to consolidated financial statements.

CLARENCE RAINES & Co.

New York, N. Y.
December 12, 1973

0000320

PARKLANE HOSIERY COMPANY, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

A S S E T S

	September 29, 1973	June 29, 1974 (Unaudited)
Current assets:		
Cash	\$1,392,489	\$ 475,940
Accounts receivable	269,024	299,018
Notes receivable	56,179	118,000
	325,203	417,018
	10,000	10,000
Less: Allowance for doubtful accounts	315,203	407,018
	3,368,814	4,304,000
Merchandise inventory—Note 1(b)	114,310	67,451
Prepaid expenses and sundry assets	5,190,816	5,254,409
Total current assets		
Property and equipment—at cost—Notes 1(c) and 2:		
Land and building	241,562	126,967
Fixtures and equipment	3,905,787	3,929,434
Leasehold improvements	2,692,417	2,785,374
Automotive equipment	26,279	26,318
	6,866,045	6,868,093
	2,506,819	2,867,077
Less: Accumulated depreciation and amortization	4,359,226	4,001,016
Other assets:		
Accounts and notes receivable (amount due after one year)	108,255	75,892
Cash surrender value of life insurance policies (less loans from insurance companies of \$113,776)	14,227	14,768
Lease acquisition costs—net of amortization—Note 1(d)	233,633	199,884
Sundry other assets	66,874	106,715
	422,989	397,259
	<u>\$9,973,031</u>	<u>\$9,652,684</u>

The accompanying notes to consolidated financial statements are an integral part hereof.

PARKLANE HOSIERY COMPANY, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

LIABILITIES AND STOCKHOLDERS' EQUITY

	September 29, 1973	June 29, 1974 (Unaudited)
Current liabilities:		
Accounts payable	\$3,139,171	\$2,819,650
Current portion of long-term liabilities—Note 2	76,766	833,215
Notes payable—officers and director (interest rate 10.35%—final payment February 1974)	70,000	—
Taxes based on income	313,549	97,038
Accrued liabilities:		
Payroll	89,161	102,126
Taxes (other than taxes based on income)	165,982	164,217
Rent	96,109	82,586
Miscellaneous	276,011	618,953
Total current liabilities	<u>4,226,749</u>	<u>4,717,785</u>
Long-term liabilities (less current portion)—Note 2	<u>1,215,775</u>	<u>436,937</u>
Deferred income taxes—Note 1(e)	<u>310,938</u>	<u>320,938</u>
Commitments—Note 4	—	—
Stockholders' equity—Notes 2 and 3:		
Preferred stock—par value \$5 per share		
Authorized—300,000 shares		
Issued and outstanding—none		
Common stock—par value \$.50 per share		
Authorized—3,000,000 shares		
Issued—1,060,000 shares in 1973 and 1974 including shares held in treasury September 29, 1973—31,700; June 29, 1974—120,754	530,000	530,000
Capital in excess of par value	2,287,187	2,287,187
Retained earnings	1,497,805	1,657,201
	<u>4,314,992</u>	<u>4,474,388</u>
Less: Treasury stock—at cost	95,423	297,364
Total stockholders' equity	<u>4,219,569</u>	<u>4,177,024</u>
	<u>\$9,973,031</u>	<u>\$9,652,684</u>

The accompanying notes to consolidated financial statements are an integral part hereof.

PARKLANE HOSIERY COMPANY, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF CAPITAL IN EXCESS OF PAR VALUE

	For the Fiscal Years Ended					For the Thirty-Nine Weeks Ended
	September 27, 1969 (52 Weeks)	October 3, 1970 (53 Weeks)	October 2, 1971 (52 Weeks)	September 30, 1972 (52 Weeks)	September 29, 1973 (52 Weeks)	June 29, 1974 (Unaudited)
Balance at beginning of period	\$2,242,187	\$2,242,187	\$2,242,187	\$2,242,187	\$2,242,187	\$2,287,187
Proceeds in excess of par value of common stock sold under stock option plan	—	—	—	—	45,000	—
Balance at end of period	<u>\$2,242,187</u>	<u>\$2,242,187</u>	<u>\$2,242,187</u>	<u>\$2,242,187</u>	<u>\$2,287,187</u>	<u>\$2,287,187</u>

CONSOLIDATED STATEMENT OF RETAINED EARNINGS

Balance at beginning of period	\$ 797,548	\$1,330,225	\$1,098,831	\$ 713,508	\$ 974,622	\$1,497,805
Net earnings (loss)	<u>532,677</u>	<u>(231,394)</u>	<u>(385,323)</u>	<u>261,114</u>	<u>523,183</u>	<u>159,396</u>
Balance at end of period	<u>\$1,330,225</u>	<u>\$1,098,831</u>	<u>\$ 713,508</u>	<u>\$ 974,622</u>	<u>\$1,497,805</u>	<u>\$1,657,201</u>

The accompanying notes to consolidated financial statements are an integral part hereof.

523

PARKLANE HOSIERY COMPANY, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF CHANGES IN FINANCIAL POSITION

	For the Fiscal Years Ended			For the Thirty-Nine Weeks Ended
	October 2, 1971 (52 Weeks)	September 30, 1972 (52 Weeks)	September 29, 1973 (52 Weeks)	June 29, 1974 (Unaudited)
Working capital was provided by:				
Income (loss) before extraordinary items	\$ (298,298)	\$ 402,582	\$ 466,183	\$ 159,396
Add items not requiring current working capital:				
Depreciation and amortization	494,021	559,776	632,531	540,749
Deferred income taxes	(180,414)	390,000	82,000	10,000
Loss on dispositions of property and equipment	—	—	108,967	52,349
Working capital provided by operations, exclusive of extraordinary items	15,309	1,352,358	1,289,681	762,494
Extraordinary items—net—Note A	(87,025)	(141,468)	57,000	—
Add (deduct) items not requiring current working capital:				
Deferred income taxes	—	(150,000)	—	—
Net book value of property and equipment dispositions	—	232,070	—	—
Working capital provided by (used for) extraordinary items	(87,025)	(59,398)	57,000	—
Working capital provided by operations	(71,716)	1,292,960	1,346,681	762,494
Net increase (decrease) in long-term liabilities	641,948	(157,616)	118,296	(778,838)
Proceeds received on exercise of stock options	—	—	50,000	—
Proceeds received on dispositions of property and equipment	—	—	28,827	241,331
Working capital provided by acquisition of Corsetorium Service Co., Inc. and subsidiaries	—	256,270	—	—
Totals	570,232	1,391,614	1,543,804	224,987
Working capital was used for:				
Additions to property and equipment	1,342,838	613,730	640,103	442,470
Net increase in other assets	72,476	69,081	29,008	8,019
Purchase of shares of treasury stock	—	—	95,423	201,941
Totals	1,415,314	682,811	764,534	652,430
Net increase (decrease) in working capital	\$ (845,082)	\$ 708,803	\$ 779,270	\$ (427,443)
The changes in working capital were represented by an increase or (decrease) in:				
Current assets:				
Cash	\$ 671,186	\$ (349,947)	\$ 607,935	\$ (916,549)
Accounts and notes receivable	103,721	79,998	(9,360)	91,811
Merchandise inventory	(871,284)	227,317	721,116	935,186
Refundable taxes	(277,939)	(166,574)	—	—
Prepaid expenses and sundry assets	(67,687)	115,279	(113,014)	(46,859)
Due from officer	(188,582)	—	—	—
	(630,585)	(93,827)	1,206,937	63,593
Current liabilities:				
Accounts payable	737,580	(907,627)	202,164	(319,521)
Current portion of long-term liabilities	(663,407)	(47,563)	13,843	756,449
Notes payable—officers and director	—	—	70,000	(70,000)
Taxes based on income	—	62,581	250,968	(216,511)
Accrued expenses and sundry payables	140,324	89,979	(109,308)	340,619
	214,497	(802,630)	427,667	491,036
Net increase (decrease) in working capital	(845,082)	708,803	779,270	(427,443)
Working capital (deficiency)—beginning of period	321,076	(524,006)	184,797	964,067
Working capital (deficiency)—end of period	\$ (524,006)	\$ 184,797	\$ 964,067	\$ 536,624

The accompanying notes to consolidated financial statements are an integral part hereof.

PARKLANE HOSIERY COMPANY, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1—Summary of Significant Accounting Policies

(a) Principles of Consolidation:

The consolidated financial statements include the accounts of the Company and all of its subsidiaries. All significant intercompany items have been eliminated.

(b) Merchandise Inventory:

Inventory is valued at lower of cost (first-in, first-out) or market value.

(c) Property and Equipment:

Depreciation is computed by the straight-line method based on the estimated useful lives of the respective assets as follows:

Buildings	25 years
Fixtures and equipment	10 years
Automotive equipment	3 years
Leasehold improvements	Term of lease or useful life

Expenditures for maintenance and repairs are charged against income as incurred. Expenditures for betterments and renewals are capitalized. When assets are fully depreciated, retired or otherwise disposed of, the cost and related amounts of accumulated depreciation and amortization are eliminated from the accounts and any gains or losses are reflected in earnings.

(d) Lease Acquisition Costs:

Lease acquisition costs have been capitalized and represent the costs of obtaining store leases. Such costs are amortized by annual charges to operations over the lives of the respective leases.

(e) Deferred Income Taxes:

Deferred income taxes arise principally from income tax and financial reporting differences with respect to depreciation and investment tax credits.

(f) Stock Options:

No accounting is made for options until they are exercised, at which time the excess of the option price over the par value of the capital stock is credited to the capital in excess of par value accounts.

NOTE 2—Long-Term Liabilities

The long-term liabilities consist of the following:

	September 29, 1973	June 29, 1974
10¾% (8¾% at September 29, 1973)		
Note payable—bank—due January 2, 1975(a)	\$ 500,000	\$ 500,000
12¾% (10¾% at September 29, 1973)		
Note payable—bank—due January 3, 1975(a)	250,000	250,000
6% Convertible Subordinated Note(b)	380,625	341,250
6½% Mortgage payable(c)	64,628	62,087
Notes payable—other	97,288	116,815
	1,292,541	1,270,152
Less: Current portion	76,766	833,215
	<u>\$1,215,775</u>	<u>\$ 436,937</u>

PARKLANE HOSIERY COMPANY, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS --(Continued)

(a) Under the covenants of the bank loan, as amended, the Company is required, among other things, to maintain consolidated tangible net worth (as defined in the agreement) in excess of \$2,981,000. In addition, the Company is required to restrict payment of executive compensation (\$200,000 in aggregate in any fiscal year), restrict capital expenditures, limit additional leasing and prohibit payment of cash dividends.

(b) On September 30, 1972, the 6% Convertible Subordinated Note was issued in connection with the acquisition of all of the capital stock of Corsetorium Service Co., Inc. The note is subordinated and junior to any and all senior indebtedness (as defined).

The noteholder has six annual options exercisable by June 30th of each year to convert the installments due during the next twelve months into shares of the Company's common stock. The conversion price at June 30, 1975 will be \$13.07 per share, and is increased at the rate of 10% a year, to \$21.05 per share in the final period. The Company has reserved 22,418 shares of its common stock for potential conversions.

(c) Land having a book value at June 29, 1974 of \$60,000 is pledged as security for the mortgage payable.

(d) The total annual maturities in each of the next five years subsequent to June 29, 1974 are as follows:

<u>Year</u>	
1975	\$833,215
1976	87,917
1977	76,484
1978	70,676
1979	64,365

NOTE 3—Stock Option Plan

Under the Company's qualified stock option plan, options may be granted to employees of the Company at prices not less than 100% of market value on the date of grant. Options are exercisable in whole or in part during the five years after the date of grant.

The changes in outstanding options were as follows:

	<u>For the Fiscal Years Ended</u>			<u>For the Thirty-Nine Weeks Ended June 29, 1974 (Unaudited)</u>
	<u>1971</u>	<u>1972</u>	<u>1973</u>	
Outstanding at beginning of period at a price range of:				
1973 and 1974—\$5.00 to \$6.44				
(1972—\$5.00 to \$5.625)	—	35,000	38,900	28,500
Add: Granted	35,000	3,900	2,100	1,700
	<u>35,000</u>	<u>38,900</u>	<u>41,000</u>	<u>30,200</u>
Deduct: Terminated	—	—	2,500	350
Exercised	—	—	10,000	—
	<u>—</u>	<u>—</u>	<u>12,500</u>	<u>350</u>
Outstanding at end of period at a price range of:				
1974—\$2.375 to \$6.44				
(1972 and 1973—\$5.00 to \$6.44				
1971—\$5.00 to \$5.625)	35,000	38,900	28,500	29,850
Aggregate option price	<u>\$182,813</u>	<u>\$207,929</u>	<u>\$153,697</u>	<u>\$155,481</u>

PARKLANE HOSIERY COMPANY, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Information as at June 29, 1973 with respect to the Company's stock options is as follows:

	Number of Shares	Option Price		Market Price	
		Per Share	Aggregate	Per Share	Aggregate
			(At date of grant)		
Options outstanding at June 29, 1974:					
Date of grant:					
May 12, 1971	12,500	\$5.625	\$ 70,313	\$5.00	\$ 62,500
May 12, 1971	12,500	5.00	62,500	3.375	42,188
February 15, 1972	1,950	6.44	12,558	6.44	12,558
December 8, 1972	1,200	5.06	6,072	5.06	6,072
December 27, 1973	1,700	2.375	4,038	2.375	4,038
	<u>29,850</u>		<u>\$155,481</u>		<u>\$127,356</u>
			(At date became exercisable)		
Options which became exercisable:					
Year ended:					
October 2, 1971	10,000	\$5.00	\$ 50,000	\$5.00	\$ 50,000
September 30, 1972	12,500	5.625	70,313	5.625	70,313
September 29, 1973	14,800	\$5.00-\$6.44	77,313	\$3.50-\$5.25	55,825
Thirty-nine weeks ended ended June 29, 1974	1,200	\$5.06	6,072	\$3.00	3,600
			(At date exercised)		
Options exercised during the fiscal year ended September 29, 1973					
(None in other periods)	10,000	\$5.00	\$ 50,000	\$5.50	\$ 55,000
Options available for grant:					
October 2, 1971	40,000				
September 30, 1972	36,100				
September 29, 1973	36,500				
June 29, 1974	35,150				

NOTE 4—Commitments

Leases:

Rental expense charged to operations is as follows:

	<u>Rental Expense</u>	<u>Rental Income</u>
For the fiscal year ended:		
October 2, 1971	\$2,101,185	\$560,000
September 30, 1972	2,421,072	562,008
September 29, 1973	2,770,952	547,446
For the thirty-nine weeks ended:		
June 29, 1974 (unaudited)	2,822,721	386,806

PARKLANE HOSIERY COMPANY, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following is a summary as at June 29, 1974 of the Company's obligations under 454 noncancelable operating leases expiring through 1999, of minimum annual rentals (exclusive of occupancy costs such as taxes, insurance and other items to be paid by the lessee).

	<u>Minimum Aggregate Rental</u>	<u>Rental Income</u>
1975	\$3,292,000	\$361,000
1976	2,992,000	304,000
1977	2,705,000	197,000
1978	2,477,000	154,000
1979	2,265,000	121,000
1980-1984	9,987,000	280,000
1985-1989	4,034,000	208,000
1990-1994	1,321,000	99,000
thereafter	160,000	32,000

NOTE 5—Supplemental Profit and Loss Information

	<u>For the Fiscal Years Ended</u>			<u>For the Thirty-Nine Weeks Ended June 29, 1974 (Unaudited)</u>
	<u>October 2, 1971</u>	<u>September 30, 1972</u>	<u>September 29, 1973</u>	
Maintenance and repairs	\$ 77,041	\$ 79,777	\$ 70,657	\$ 95,443
Depreciation and amortization:				
Property, plant and equipment	472,209	533,050	604,620	507,000
Intangible assets	21,812	26,726	27,911	33,749
Taxes, other than income taxes:				
Payroll	274,970	300,879	395,732	319,782
Other	118,155	141,305	194,867	180,733
Rent	2,101,185	2,421,072	2,770,952	2,822,721

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EXHIBIT A

Plan of Merger dated August 29, 1974 between Parklane Hosiery Company, Inc., a New York corporation ("Parklane") and New PLHC Corp. ("Newco"), a New York corporation.

The parties deem it advisable and in the best interests of their corporations and their shareholders that Newco be merged in Parklane as provided herein. It is therefore agreed as follows:

1. Parklane was incorporated in New York on September 27, 1955. Its authorized capital stock consists of 3,000,000 shares of Common Stock of the par value of \$.50 per share of which 938,946 shares are outstanding. There are 121,054 shares of Common Stock of Parklane held in Treasury.

2. Newco was incorporated in New York on August 27, 1974. Its authorized capital stock consists of 682,596 shares of Common Stock of the par value of \$.01 per share, of which 672,196 shares are outstanding. There are no shares of Newco held in its treasury.

3. As soon as practicable after this Plan has been approved by the shareholders of Parklane and Newco, such documents as may be required by the Business Corporation Law of New York shall be appropriately signed, verified and filed in the manner provided in such statute. The term "Effective Date" as used herein shall mean the date on which such documents were so filed.

4. Approval of this Plan shall require the affirmative vote of two-thirds of the outstanding shares of Common Stock of Parklane and two-thirds of the outstanding shares of Common Stock of Newco.

5. On the Effective Date Newco shall be merged into Parklane and the separate corporate existence of Newco shall cease. Parklane shall be the surviving corporation and shall continue to be governed by the laws of New York.

6. (a) Each issued and outstanding share of Parklane Common Stock owned by any holder other than Newco shall by virtue of the merger be forthwith cancelled and the holders shall cease to have any rights with respect thereto; and in lieu thereof the holder of such share(s) shall, upon surrender of the same after the Effective Date duly endorsed in such manner and at such place as Parklane shall require, be entitled to receive cash at the rate of \$2.00 per share for each share held.

(b) Each issued and outstanding share of Parklane Common Stock owned by Newco and all shares of Parklane Common Stock held in Parklane's Treasury shall, by virtue of the merger, be forthwith cancelled.

(c) Each share of Newco Common Stock, which shall be outstanding immediately prior to the Effective Date shall, by virtue of the merger and without any action on the part of the holder thereof, become one share of Parklane Common Stock.

7. This Plan may be terminated and the merger provided for herein may be abandoned at any time prior to the Effective Date, whether before or after the approval by the shareholders of Parklane and Newco, without liability on the part of either of such corporations or their respective directors, officers or shareholders, by action of either the Board of Directors of Parklane or the Board of Directors of Newco.

IN WITNESS WHEREOF, the parties have duly executed this Plan as of the date first written above.

PARKLANE HOSIERY COMPANY, INC.

By HERBERT N. SOMEKH
Chairman of the Board, President

NEW PLHC CORP.

By NEIL B. PERSKY
Vice President

0000529

EXHIBIT B

§ 910. *Right of shareholder to receive payment for shares upon merger, consolidation or sale, lease, exchange or other disposition of assets.*—(a) A shareholder of a domestic corporation shall, subject to and by complying with section 623 (Procedure to enforce shareholder's right to receive payment for shares), have the right to receive payment of the fair value of his shares and the other rights and benefits provided by such section, in the following cases:

(1) Any shareholder entitled to vote who does not assent to the taking of an action specified in subparagraphs (A) and (B).

(A) Any plan of merger or consolidation to which the corporation is a party; except that the right to receive payment of the fair value of his shares shall not be available:

(i) To a shareholder of the surviving corporation in a merger authorized by section 905 (Merger of subsidiary corporation), or paragraph (c) of section 907 (Merger or consolidation of domestic and foreign corporations); and

(ii) To a shareholder of the surviving corporation in a merger authorized by this article, other than a merger specified in subparagraph (i), unless such merger effects one or more of the changes specified in subparagraph (b) (6) of section 806 (Provisions as to certain proceedings) in the rights of the shares held by such shareholder.

(B) Any sale, lease, exchange or other disposition of all or substantially all of the assets of a corporation which requires shareholder approval under section 909 (Sale, lease, exchange or other disposition of assets) other than a transaction wholly for cash where the shareholders' approval thereof is conditioned upon the dissolution of the corporation and the distribution of substantially all of its net assets to the shareholders in accordance with their respective interests within one year after the date of such transaction.

(2) Any shareholder of the subsidiary corporation in a merger authorized by section 905 or paragraph (c) of section 907, who files with the corporation a written notice of election to dissent as provided in paragraph (c) of section 623.

§ 623. *Procedure to enforce shareholder's right to receive payment for shares.*—(a) A shareholder intending to enforce his right under a section of this chapter to receive payment for his shares if the proposed corporate action referred to therein is taken shall file with the corporation, before the meeting of shareholders at which the action is submitted to a vote, or at such meeting but before the vote, written objection to the action. The objection shall include a statement that he intends to demand payment for his shares if the action is taken. Such objection is not required from any shareholder to whom the corporation did not give notice of such meeting in accordance with this chapter or where the proposed action is authorized by written consent of shareholders without a meeting.

(b) Within ten days after the shareholders' authorization date, which term as used in this section means the date on which the shareholders' vote authorizing such action was taken, or the date on which such consent without a meeting was obtained from the requisite shareholders, the corporation shall give written notice of such authorization or consent by registered mail to each shareholder who filed written objection or from whom written objection was not required, excepting any who voted for or consented in writing to the proposed action.

(c) Within twenty days after the giving of notice to him, any shareholder to whom the corporation was required to give such notice and who elects to dissent shall file with the corporation a written notice of such election, stating his name and residence address, the number and classes of shares as to which he dissents and a demand for payment of the fair value of his shares. Any shareholder who elects to dissent from a merger under section 905 (Merger of subsidiary corporation) or paragraph (c) of section 907 (Merger or consolidation of domestic and foreign corporations) shall file a written notice of such

election to dissent within twenty days after the giving to him of a copy of the plan of merger or an outline of the material features thereof under section 905.

(d) A shareholder may not dissent as to less than all of the shares, as to which he has a right to dissent held by him of record, that he owns beneficially. A nominee or fiduciary may not dissent on behalf of any beneficial owner as to less than all of the shares of such owner, as to which such nominee or fiduciary has a right to dissent, held of record by such nominee or fiduciary.

(e) Upon filing a notice of election to dissent, the shareholder shall cease to have any of the rights of a shareholder except the right to be paid the fair value of his shares and any other rights under this section. A notice of election may be withdrawn by the shareholder at any time before an offer is made by the corporation, as provided in paragraph (g), to pay for his shares. After such offer is withdrawn, or the proposed corporate action is abandoned or rescinded, or a court shall determine that the shareholder is not entitled to receive payment for his shares, or the shareholder shall otherwise lose his dissenter's rights, he shall not have the right to receive payment for his shares and he shall be reinstated to all his rights as a shareholder as of the filing of his notice of election, including any intervening preemptive rights and the right to payment of any intervening dividend or other distribution or, if any such rights have expired or any such dividend or distribution other than in cash has been completed, in lieu thereof, at the election of the corporation, the fair value thereof in cash as determined by the board as of the time of such expiration or completion, but without prejudice otherwise to any corporate proceedings that may have been taken in the interim.

(f) At the time of filing the notice of election to dissent or within one month thereafter the shareholder shall submit the certificates representing his shares to the corporation, or to its transfer agent, which shall forthwith note conspicuously thereon that a notice of election has been filed and shall return the certificates to the shareholder or other person who submitted them on his behalf. Any shareholder who fails to submit his certificates for such notation as herein specified shall, at the option of the corporation exercised by written notice to him within forty-five days from the date of filing of such notice of election to dissent, lose his dissenter's rights unless a court, for good cause shown, shall otherwise direct. Upon transfer of a certificate bearing such notation, each new certificate issued therefor shall bear a similar notation together with the name of the original dissenting holder of the shares and a transferee shall acquire no rights in the corporation except those which the original dissenting shareholder had after filing his notice of election.

(g) Within seven days after the expiration of the period within which shareholders may file their notices of election to dissent, or within seven days after the proposed corporate action is consummated, whichever is later (but in no case later than ninety days from the shareholders' authorization date), the corporation or, in the case of a merger or consolidation, the surviving or new corporation, shall make a written offer by registered mail to each shareholder who has filed such notice of election to pay for his shares at a specified price which the corporation considers to be their fair value.

If the corporate action has not been consummated upon the expiration of the ninety-day period after the shareholders' authorization date, the offer may be conditioned upon the consummation of such action. Such offer shall be made at the same price per share to all dissenting shareholders of the same class, or if divided into series, of the same series and shall be accompanied by a balance sheet of the corporation whose shares the dissenting shareholder holds as of the latest available date, which shall not be earlier than twelve months before the making of such offer, and a profit and loss statement or statements for not less than a twelve-month period ended on the date of such balance sheet or, if the corporation was not in existence throughout such twelve-month period, for the portion thereof during which it was in existence. If within thirty days after the making of such offer, the corporation making the offer and any shareholder agree upon the price to be paid for his shares, payment therefor shall be made within sixty days after the making of such offer or the consummation of the proposed corporate action, whichever is later, upon the surrender of the certificates representing such shares.

(h) The following procedure shall apply if the corporation fails to make such offer within such period of seven days, or if it makes the offer and any dissenting shareholder or shareholders fail to agree with it within the period of thirty days thereafter upon the price to be paid for their shares:

(1) The corporation shall, within twenty days after the expiration of whichever is applicable of the two periods last mentioned, institute a special proceeding in the supreme court in the judicial district in which the office of the corporation is located to determine the rights of dissenting shareholders and to fix the fair value of their shares. If, in the case of merger or consolidation, the surviving or new corporation is a foreign corporation without an office in this state, such proceeding shall be brought in the county where the office of the domestic corporation, whose shares are to be valued, was located.

(2) If the corporation fails to institute such proceeding within such period of twenty days, any dissenting shareholder may institute such proceeding for the same purpose not later than thirty days after the expiration of such twenty day period. If such proceeding is not instituted within such thirty day period, all dissenter's rights shall be lost unless the supreme court, for good cause shown, shall otherwise direct.

(3) All dissenting shareholders, excepting those who, as provided in paragraph (g), have agreed with the corporation upon the price to be paid for their shares, shall be made parties to such proceeding, which shall have the effect of an action quasi in rem against their shares. The corporation shall serve a copy of the petition in such proceeding upon each dissenting shareholder who is a resident of this state in the manner provided by law for the service of a summons, and upon each nonresident dissenting shareholder either by registered mail and publication, or in such other manner as is permitted by law. The jurisdiction of the court shall be plenary and exclusive.

(4) The court shall determine whether each dissenting shareholder, as to whom the corporation requests the court to make such determination, is entitled to receive payment for his shares. If the corporation does not request any such determination or if the court finds that any dissenting shareholder is so entitled, it shall proceed to fix the value of the shares, which, for the purposes of this section, shall be the fair value as of the close of business on the day prior to the shareholders' authorization date, excluding any appreciation or depreciation directly or indirectly induced by such corporate action or its proposal. The court may, if it so elects, appoint an appraiser to receive evidence and recommend a decision on the question of fair value. Such appraiser shall have the power, authority and duties specified in the order appointing him, or any amendment thereof.

(5) The final order in the proceeding shall be entered against the corporation in favor of each dissenting shareholder who is a party to the proceeding and is entitled thereto for the value of his shares so determined.

(6) The final order shall include an allowance for interest at such rate as the court finds to be equitable, from the shareholders' authorization date to the date of payment. If the court finds that the refusal of any shareholder to accept the corporate offer of payment for his shares was arbitrary, vexatious or otherwise not in good faith, no interest shall be allowed to him.

(7) The costs and expenses of such proceeding shall be determined by the court and shall be assessed against the corporation, except that all or any part of such costs and expenses may be apportioned and assessed, as the court may determine, against any or all of the dissenting shareholders who are parties to the proceeding if the court finds that their refusal to accept the corporate offer was arbitrary, vexatious or otherwise not in good faith. Such expenses shall include reasonable compensation for and the reasonable expenses of the appraiser, but shall exclude the fees and expenses of counsel for and experts employed by any party unless the court, in its discretion, awards such fees and expenses. In exercising such discretion, the court shall consider any of the following: (A) that the fair value of the shares as determined materially exceeds the amount which the

corporation offered to pay; (B) that no offer was made by the corporation; and (C) that the corporation failed to institute the special proceeding within the period specified therefor.

(8) Within sixty days after final determination of the proceeding, the corporation shall pay to each dissenting shareholder the amount found to be due him, upon surrender of the certificates representing his shares.

(i) Shares acquired by the corporation upon the payment of the agreed value therefor or of the amount due under the final order, as provided in this section, shall become treasury shares or be cancelled as provided in section 515 (Reacquired shares), except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide.

(j) No payment shall be made to a dissenting shareholder under this section at a time when the corporation is insolvent or when such payment would make it insolvent. In such event, the dissenting shareholder shall, at his option:

(1) Withdraw his notice of election, which shall in such event be deemed withdrawn with the written consent of the corporation; or

(2) Retain his status as a claimant against the corporation and, if it is liquidated, be subordinated to the rights of creditors of the corporation, but have rights superior to the non-dissenting shareholders, and if it is not liquidated, retain his right to be paid for his shares, which right the corporation shall be obliged to satisfy when the restrictions of this paragraph do not apply.

(3) The dissenting shareholder shall exercise such option under subparagraph (1) or (2) by written notice filed with the corporation within thirty days after the corporation has given him written notice that payment for his shares cannot be made because of the restrictions of this paragraph. If the dissenting shareholder fails to exercise such option as provided, the corporation shall exercise the option by written notice given to him within twenty days after the expiration of such period of thirty days.

(k) The enforcement by a shareholder of his right to receive payment for his shares in the manner provided herein shall exclude the enforcement by such shareholder of any other right to which he might otherwise be entitled by virtue of share ownership, except as provided in paragraph (e), and except that this section shall not exclude the right of such shareholder to bring or maintain an appropriate action to obtain relief on the ground that such corporate action will be or is unlawful or fraudulent as to him.

(l) Except as otherwise expressly provided in this section, any notice to be given by a corporation to a shareholder under this section shall be given in the manner provided in section 605 (Notice of meetings of shareholders).

(m) This section shall not apply to foreign corporations except as provided in subparagraph (e) (2) of section 907 (Merger or consolidation of domestic and foreign corporations).

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EXHIBIT

U. S. DIST. COURT

S. D. OF N. Y.

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FPI-MI-9-24-75-SOM-4417

January 23, 1974

Dear Herbs:

For some time now, I have had some promises and what amounted to real commitments from you in connection with reducing your personal loan with us. It was my clear understanding that we would have a clean up effected from funds coming from Leiman in connection with the Tulsa property development. The Holyoke Realty situation, which really should not be a loan here at this shop at all, has also been on for some time and I would appreciate very much if you would have this letter serve as a reminder to you that I would like some clear cut action on both of these loans in the immediate future.

V
D

I know that your problems associated with the recent fire are consuming a great deal of your time, but I do wish you would reserve some of it to expedite these matters.

Sincerely,

TEB

Mr. Harbert N. Somakh, President
Parklane Hosiery Co., Inc.
1540 Union Turnpike
New Hyde Park, New York 11040

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(ED. 4-23-71)

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EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

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DIV. 153 3/4 15 FOR 1
TH 10/15-17,

February 25, 1974

Mr. Herbert Somekh
Parklane Hosiery Co., Inc.
1540 Union Turnpike
New Hyde Park, New York 11040

Dear Herb:

I appreciate your coming in the other day and reviewing with me the present status concerning the Riverbend property as it pertains to the possibility of your getting funds from it shortly. From what we discussed, it was my impression that the accountants are presently doing an audit of the Riverbend situation as of December 31, 1973 and upon completion of it, the Lehman people would be in a position to advance the \$600,000. as agreed. Recognizing this as an important area in the reduction of your personal loan with us, there are certain basic information features I would like to get from you concerning this. With all of the stages that have occurred at Lehman lately, do you have a definite written commitment from them pertaining to this pay-out and if so, is it predicated on the appearance of the December 31st audit, or just the December 31st audit? Who at Lehman could I discuss this with, particularly as it pertains to the new management arrangement down there? This is awfully important information on the overall matter, so I would appreciate getting as much of it as possible and as soon as possible.

At the same time I would like very much to get an up-date, possibly from Nat Lubow of the various other real estate enterprises you have, which are in one form or another held as security. Some of the instruments we hold are notes with specific maturities which I presume are being paid to you. Is it possible for the funds from these being used to reduce the note as you go along?

As indicated to you at our meeting, and which you recognize and understand, we would like very much to bring this matter to a close as soon as possible.

Sincerely,

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(ED. 4-22-71)

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PLAINTIFF'S

EXHIBIT

U. S. DIST. COURT

S. D. OF N. Y.

JUN 2-1975

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March 12, 1974

FPI-NI-9-24-78-808-4417

OFFICE OF
THE PRESIDENT

Mr. Thomas E. Raggott
Bankers Trust Company
550 Seventh Avenue
New York, N.Y.

Dear Tom:

As per our conversation on Friday, I will proceed immediately to sell the Rite Aid mortgage and to refinance the house. The proceeds from these two transactions will go to reduce any amounts that I have presently outstanding with you.

Every effort will be made to close these two transactions and hopefully in less than 90 days.

Needless to say, every effort will be extended in all directions to liquidate any other holdings that I have at the earliest date possible.

Many thanks.

Sincerely,



HERBERT H. SOMERHI

HNS:skb

P.S. Is it possible to get a mortgage from Bankers Trust on the house? That may expedite that end of the transaction.

CC: Mr. George J. Hutt
Clarence Business & Co.

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MAR 18 1974	
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PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

JUN 2-1976

FPI-MI-9-24-75-SOW-4417

March 15, 1974

Mr. Thomas E. Baggott
Bankers Trust Company
550 Seventh Avenue
New York, N.Y.

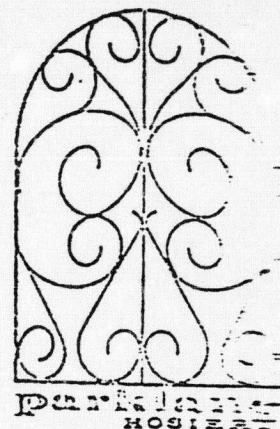
Dear Tom:

To bring you up to date on my activities since our last meeting, in regards to our discussions at that meeting:

- 1) I did send a letter to Rite Aid asking them whether they would be interested in acquiring their own note back at a discount;
- 2) I gave copies of the mortgage and the note to Nate Lubow to discuss with Saul Silverman, the managing partner, about his interest or the interest of some of their clients, particularly since they have an office in Buffalo, something could be worked out. They did show some very definite initial interest.
- 3) Copies of the mortgage were handed over to Mr. Andrew Carr of Kaye, Scholer who apparently deals in this kind of thing as of this morning he called me to tell me that there are several people who are very definitely interested, and the price would be no less than \$185,000 and possibly a much better number than that, since the offer of the hundred and eighty-five was the initial low point and he feels that probably somewhere around two hundred, a deal can be made. Of course as discussed last Friday, regardless of what the yield, a deal will be made, so that we can effect a reduction.

As to the other item, which is the mortgage on the house, I have already instructed US Life to reduce the mortgage by the cash value available so that I will have the house effectively by next week on a free and clear basis, and whether meet with local savings banks or other banks, to place a mortgage on it as soon as I can.

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OFFICE OF
THE PRESIDENT

Sincerely,

HERBERT N. SOMEKH
HNS:skb

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DIV. EX SOMEKH 18 FOR 12
TH 10/20/75

100-338-475
8-27-75

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DC
m

March 18, 1974

Mr. Herbert M. Somekh
Parklane Hosiery Co., Inc.
1540 Union Turnpike
New Hyde Park, New York

Dear Herbs:

Thank you for the March 15th letter indicating efforts on the Rite-Aid notes and the mortgage on your home. I am glad to see the action taking place and hope that we can look forward to an early resolution on these two items. At the same time I would like to again direct your attention to the other personal assets which could be liquidated. Would you be good enough to let me have a copy of the report of Price Waterhouse on the Riverbend property and also give me an idea of what recent moves have taken place with respect to the various other real estate holdings.

Sincerely,

Thos. E. Baggott
Vice President

cc: Mr. Lubow - Clarence Raines & Co.

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FPI-M-9-24-78-SOM-44

THE PRESIDENT

March 27, 1974

Mr. Thomas E. Baggott
Bankers Trust Company
550 Seventh Avenue
New York, N.Y.

DC
m

Dear Mr. Baggott:

I do want to bring you up to date on my activities re our previous discussion.

1) On the Rite Aid mortgage, Andy Garr of Kaye, Scholer did get one quotation, and I am waiting for a quotation from Saul Silverman of Clarence Rainess from their office in Buffalo. As soon as this comes in, whichever comes in better, we will conclude a deal with one or the other. I was with Clarence Rainess yesterday and I understand this should come in within the next few days.

2) As to the mortgage on the house, I have written the insurance company, US Life, instructing them to pay down the mortgage and getting the house free and clear. I am also mailing all deeds, etc. to Kaye, Scholer so that we can go to the Savings bank nearest us for such a mortgage.

3) There are some discussions going on with Lehman as to the possibility of their buying my 50% of Tulsa for the payment of my cash advances against a reduced interest to be paid somewhere down the line. I will make any deal along this line, and they indicated that there is a real possibility of making it.

In any case, we certainly are making every effort in that direction.

Finally, again, Andy Garr at Kaye, Scholer informs me that he has possible buyers for the apartments on 56th Street on a wholesale basis. I am gathering the plans and the offering prospectus that was originally done so that these people can have all the facts and again, I will accept any offer that is made, if an offer is made.

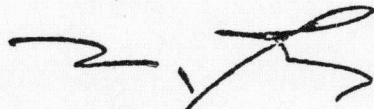
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Also, I am preparing lists of everything else that I may have, whether in mortgages or real estate so that they may be able to offer these and of course if there is any possibility of doing anything on any of them, we certainly will proceed with dispatch.

I have also inquired as to the possibility of speeding things up in Pennasuken and I have not gotten a response yet, but I will keep pursuing the subject.

I think this brings up to date the activities of the last week. I just felt that you should be kept informed.

Sincerely,



HERBERT N. SOMEKH
HNS:skb

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DIV. EX 500420 FOR 12
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(ED. 4-23-71)

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PLAINTIFF'S
EXHIBIT

U. S. DIST. COURT
S. D. OF N. Y.

JUN 2 - 1974
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FPI-MI-8-24-75-SOM-4417

April 23, 1974

Mr. Thomas E. Baggott
Bankers Trust Company
550 Seventh Avenue
New York, N.Y.

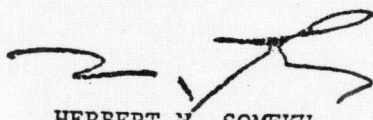
Dear Mr. Baggott:

I just wanted to bring you up to date.

On Friday, we finally got a commitment to sell my Rite Aid mortgage to Amco Associates. The closing is to take place no later than 30 days from now and all they really want to do at the present time is get a title search so that their papers are complete.

Of course at that particular time, I will pay that amount down. In the meantime, I am working on the house mortgage which will be Step No. 2.

Sincerely,


HERBERT N. SOMEKH
HNS:skb

RECEIVED BY: THOS. E. BAGGOTT
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APR 23 1974

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PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

11 id

June 7, 1974

Mr. Herbert N. Sonekh
Parklane Hosiery Co., Inc.
1540 Union Turnpike
New Hyde Park, New York 11040

Dear Herb:

I enjoyed the luncheon the other day and am pleased that you are making some reasonable progress towards solving your personal situation as well as your overall work in connection with regular corporate activities. I will be expecting to hear from you shortly then on the proceeds of the Rite-Aid note together with the personal mortgage and the other areas we discussed.

I have complete confidence in you Herb, that you are working on this to the end, that you and all concerned will be totally satisfied in as short a period as possible.

Best regards,

Sincerely,

Thos. E. Baggott
Vice President

cc: Mr. Lubow - Clarence Rainess & Co.

Mr. Fried

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(ED. 4-23-71)

JUN 2-1976

PLAINTIFF'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

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FPI-MI-9-24-75-SOM-4417

October 29, 1974

Mr. Thomas E. Maggott
Bankers Trust Company
559 Seventh Avenue
New York, N.Y.

Dear Tom:

I heard from Hays, Scholer and have been told by them
that Steve Fried may have found the mortgage documents.

Of course I instructed them to immediately proceed with
closing the deal as soon as possible.

Also, and again this is off the record since until I
have the money in my hand, I don't want to say that
I have any deals, but I have had several conversations
with the Federal Reserve and it seems that we may be
heading towards a deal that would net Parklane \$500,000
that can close around the end of the year. I am keeping
my fingers crossed since I realize that this would mean
so let's both hope it gets done.

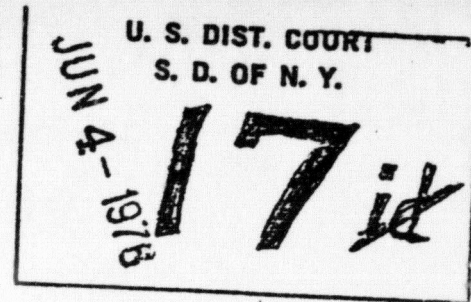
Many thanks,

Sincerely,

HERBERT H. SOMMER
HHS:akb

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March 4, 1974

Mr. Herbert N. Somekh
343 Great Neck Road
Great Neck, New York 11021

Dear Mr. Somekh:

We are no longer willing to carry the \$125,000 loan you have on our books. Interest amounting to \$2,363.01 has been past due since January 1, 1974 and the loan is now in default.

We must insist on repayment now.

Sincerely,

A. J. McARDLE
VICE PRESIDENT

vpd

MAR 4 1974
RC

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May 15, 1974

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Mr. Herbert H. Sorokh
Parklane Hosiery Company, Inc.
343 Great Neck Road
Great Neck, New York 11021

595-2300

Re: 423 JV Account

Dear Mr. Sorokh:

As you may recall, we advanced the aforementioned partnership \$150,000 on demand on December 15, 1970. Repayment was to come from the sale of stock representing cooperative apartments, with a complete liquidation of the loan anticipated about nine months thereafter.

We wrote Harold Strauss on July 13, 1973 and yourself on February 21, 1974 requesting either repayment of the loan or such recasting of the debt as would permit the bank a reasonable return in light of its original commitment. You have not replied to these requests, leaving us no alternative but to deem the loan due and payable on May 24, 1974. After that date, the matter will be turned over to our attorneys for collection, subjecting the borrower to an attorney's fee amounting to 20% of the unpaid principal balance under the terms and conditions of the note.

Yours very truly,



Richard D. Tunick
Banking Officer

RDV:rk

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(ED. 6-23-71) 76 CIV. 2024
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U. S. DIST. COURT
S. D. OF N. Y.
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U. S. DIST. COURT S. D. OF N. Y.
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FPI-MI-9-24-76-SOM-4417

THE PRESIDENT

February 8, 1974

Mr. Thomas E. Baggott
Bankers Trust Company
550 Seventh Avenue
New York, N.Y.

Dear Tom:

Of course I have gotten your letter last week, and it is not that I want to avoid or ignore the issue. The problem has been that I did not have a good enough answer to give you. As usual, when people make deals on the other side, they are very fast in making them and talking about how they would handle certain things. Now that I am on the other side where we have signed the deal with Lehman, getting them to act is not as prompt as all of us would like to see it.

I am having a meeting with them today. Also one of the things that they are theoretically waiting for is the audit which should be completed by Price Waterhouse over the next couple of weeks. Hopefully I can have some answers to give you. The matter is quite annoying and embarrassing and apologies are really not what you want. In any case, I do want you to know that there is nothing that I would not do to make things better for all concerned. As soon as I do have something from them, I certainly will get to you, and in any case I will get to you after my meetings with them no matter what.

Sincerely,

HERBERT H. SOMERLY
HNS:skb

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(ED. 4-22-71)

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PLAINTIFF'S

EXHIBIT

U. S. DIST. COURT

S. D. OF N. Y.

JUN 4 1976
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FPI-MI-9-24-75-SOM-4417

July 23, 1974

REGISTERED MAIL

Mr. Herbert N. Somekh
c/o Parklane Hosiery
1540 Union Turnpike
New Hyde Park, New York 11040

Re: \$125,000.00 Demand Loan
Plus Interest

Dear Mr. Somekh:

Please be advised that effective July 22, First National City Bank is calling your demand loan granted June 2, 1972 in the amount of \$125,000.00 plus interest accrued to date of payment.

If we do not receive full payment by August 5 we will be forced to take legal action.

Very truly yours,

Stanley H. Way
Assistant Manager

cd

cc Eli Jacobson

0000548

OFFICER OR DEPARTMENT HEAD

DIVORCE SOMEKH &

MINUTES OF A MEETING OF THE BOARD OF DIRECTORS
OF
PARKLANE HOSIERY COMPANY, INC.
July 26, 1974

USA 236-478 (ED. 4-23-71)	76 CIV. 2024 PLAINTIFF'S
JUN 3 - 1976	EXHIBIT U. S. DIST. COURT S. D. OF N. Y. 21

FPI-MI-9-24-75-SOM-4417

A meeting of the Board of Directors of Parklane Hosiery Company, Inc. was held on July 26, 1974, at the executive offices of the Corporation, 1540 Union Turnpike, New Hyde Park, New York at 4:00 p.m.

The following persons, constituting all of the members of the Board of Directors were present:

Herbert N. Somekh
Charles Yaffe
Charles F. Milner, Jr.
Stanley D. Robinson
David N. David

Also present by invitation of the Board were Neil B. Persky, John A. Friedman and Allen Kezsbom.

Herbert N. Somekh acted as Chairman of the meeting and Charles Yaffe acted as Secretary.

The Chairman reviewed the materials previously furnished to the Board concerning the Corporation's performance during the 39-week period ending June 29, 1974, and reported on the outlook for the balance of the year.

The Chairman discussed the general problems of the hosiery industry, including the decrease in per capita consumption from 22 pairs in 1970 to 12 pairs in 1974. The

0000549

Chairman stated that he did not foresee that per capita consumption would increase substantially in the future because of the different styles and attitudes toward fashion today, compared with those that had existed in the late 60's and early 70's. He also noted that due to the excess capacity available in the industry, prices for hosiery products were at a low point. The Chairman stated that a great deal of management time was being spent towards discovering different products for the Corporation to add to the products sold in its stores in order to gain the dollars lost due to the shrinking hosiery market. As examples of success in this area, the Chairman noted the increase in sales of Danskins, bodysuits and tops.

The Chairman reported on the reacquisition by the Corporation of an aggregate of 121,000 shares of its Common Stock. The Chairman stated that the reason for exceeding the prior Board authorization of 100,000 shares was the excellent opportunity to reacquire 28,000 shares from Mervyn Roberts and his wife. The Chairman noted that the price paid to Mervyn Roberts was \$1.00 per share for his 14,000 shares and indicated that this amount was deducted from his outstanding debt to the Corporation and that the remaining 14,000 shares purchased from Mervyn Roberts' wife were acquired at a price of \$1.50 per share, but were paid for by two notes of the Corporation, due respectively in January, 1975 and January, 1976. The following resolution was adopted:

0000550

RESOLVED, that the action of the officers of the Corporation in reacquiring 28,000 shares of the Corporation's Common Stock from Mervyn Roberts and his wife, on the terms and for the price discussed at this meeting, is hereby ratified and approved.

The Chairman noted, as discussed in the report to the Board, that the Corporation had approximately \$700,000 in excess inventory, which was primarily due to the loss of inventory controls resulting from the fire at the Corporation's executive offices. The Chairman noted that subsequent to the application of rigid inventory controls around the middle of May, the Corporation had effected about a one-half million dollar reduction in inventories and that the controls were still in effect. The Chairman stated that it was the Corporation's goal to reduce the present \$700,000 excess at the rate of approximately \$150,000 per month, and he therefore expected that the entire excess would be removed by the end of the year.

It was then announced that effective August 9, 1974, Mr. Milner would resign from his positions with the Corporation to accept another position that had been offered to him. The Chairman then proposed that Mr. Milner's responsibilities be assumed by Mr. Persky.

The meeting was then adjourned until following dinner at the Fresh Meadow Country Club.

Following dinner, the Treasurer reported to the Board that the Company had been advised by its insurance

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broker that it was now eligible for directors liability insurance, which the Company had been seeking for some time. The Treasurer then reviewed with the Board the general terms of a proposed directors liability insurance policy and the following resolution was then unanimously adopted:

RESOLVED, that the President, Secretary and Treasurer are each hereby authorized and directed on behalf of the Company to do all acts and execute and deliver all documents and disburse all funds as may be necessary or advisable, upon advice of the Company's counsel, to enter into an appropriate directors liability insurance policy.

Discussion was then had concerning a transaction by which the Corporation would return to the status of a private company. Messrs. Friedman and Kezsom noted that they would have to give further consideration to the legal issues involved. The discussion then turned to the question of what dollar amount the Board initially felt should be paid in such a transaction to shareholders. Messrs. Somekh, Milner and Yaffe indicated that it was their initial reaction that a price somewhere in the range of \$1.50 to \$2.00 per share would be appropriate, while Messrs. Robinson and David stated that their initial reaction was that the amount should be somewhat higher. It was determined that in order to have a better idea of what the shares of the Corporation's Common Stock were worth, it would be advisable for the Corporation to seek the opinions of two independent appraisers.

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The Board then agreed to schedule a further meeting after the independent appraisers had rendered their opinion and after the Corporation's counsel had further considered the legal issues involved.

The meeting was then adjourned.

Charles Yaffe
Secretary of the Meeting

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MINUTES OF A SPECIAL MEETING
OF
THE BOARD OF DIRECTORS
OF
PARKLANE HOSIERY COMPANY, INC.

August 29, 1974

USA 33a-475
(ED. 4-23-71)

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EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

JUN 3 - 1976
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FPI-MI-9-24-75-SOM-4417

A special meeting of the Board of Directors of Parklane Hosiery Company, Inc. was held on August 29, 1974, at the executive offices of the Corporation, 1540 Union Turnpike, New Hyde Park, New York at approximately 10:00 p.m.

The following Directors were present:

Herbert N. Somekh
Charles Yaffe
Stanley D. Robinson
David N. David

Also present by invitation were Nathan Lubow, Allen Kezsom and Richard Lubasch.

Mr. Somekh acted as Chairman of the meeting and Mr. Yaffe acted as Secretary.

The Chairman stated that the first order of business was to formally elect Mr. Persky to fill the vacancy on the Board of Directors and in the office of Executive Vice-President created by the resignation of Charles F. Milner. The Chairman noted that Mr. Persky would also continue as the Corporation's Treasurer. The following resolution was unanimously adopted:

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RESOLVED, that Mr. Neil B. Persky is elected as a Director and Executive Vice-President of the Corporation to serve until the election of his successor.

The Chairman presented a draft of a form of Proxy and combined Notice of Meeting and Proxy Statement (version 082874) to which was attached as an exhibit a Plan of Merger between the Corporation and New PLHC Corp. The Chairman stated that the draft of the Plan of Merger indicated that (a) the holders of record of the Corporation's Common Stock (other than New PLHC Corp.) would receive a yet undetermined dollar amount for each share of Common Stock held by them, (b) the shares of the Corporation's Common Stock held by New PLHC Corp. would be cancelled and (c) shareholders of New PLHC Corp. would receive one share of the Corporation's Common Stock for each share of New PLHC Corp. held. The Chairman proposed a price of \$2.00 per share to be paid to shareholders (other than New PLHC Corp.) upon the merger and stated that he felt this price to be fair in view of the following factors: the present and future financial position of the Corporation, the current state of the economy, and the general outlook for the hosiery industry. In addition, the Chairman noted that the Corporation had received the opinions of two investment banking firms as to fair value of the Corporation's Common Stock. The Chairman stated that Thompson & McKinnon Auchincloss Kohlmeyr Inc. had advised the Corporation that on August 29, 1974, in their opinion, the value of the Corporation's Common

0000555

Stock was between \$1.70 and \$1.85 per share, and that Foster Securities Corp. had advised the Corporation that on August 29, 1974, in their opinion, the value of the Corporation's Common Stock was between \$1.20 and \$1.30 per share. The Chairman then opened the floor for discussion of the draft of the Proxy Statement and Plan of Merger.

Mr. Robinson stated that he believed that the proposed price of \$2.00 per share was, for the reasons he had previously communicated to members of the Board, not sufficient to make the transaction in the interest of all shareholders. In Mr. Robinson's view, a price somewhere between \$2.50 and \$3.00 per share would be fair, and a \$3.00 price would be preferable.

The contents of the draft of the Proxy Statement were reviewed in detail and certain changes were made to the draft presented to the meeting. The following resolutions were adopted by the vote of Messrs. Somekh, Yaffe, Persky and David, Mr. Robinson dissenting:

RESOLVED, that the form of Proxy and the combined Notice of Meeting and Proxy Statement presented to the meeting are approved, and that the Plan of Merger between the Corporation and New PLHC Corp. attached to the Proxy Statement as Exhibit A, with the insertion of a price of \$2.00 per share to be paid to holders of the Corporation's Common Stock (other than New PLHC Corp.), is approved and adopted; and that subject to the approval of the Corporation's shareholders, the Corporation shall, upon the terms and conditions set forth in such Plan of Merger, be merged with New PLHC Corp.

RESOLVED, that in order to obtain the approval of the Corporation's shareholders to the Plan of Merger, a special meeting of shareholders shall be held on October 14, 1974, at the executive offices of the Corporation, 1540 Union Turnpike, New Hyde Park, New York at 10:30 a.m., and that the record date for such meeting be September 14, 1974.

RESOLVED, that any one or more of the officers of the Corporation is authorized and directed to take such action and execute such documents, including but not limited to, any acts or documents as may be required under the Business Corporation Law of the State of New York and the Securities Exchange Act of 1934, as any one or more of such officers, in his discretion, may deem advisable to effectuate the foregoing resolutions.

The meeting was then adjourned.

Charles Yaffe
Secretary of the Meeting

0000557

in presence of Mr. E. H. [unclear] [unclear]
MINUTES OF A MEETING OF THE EXECUTIVE COMMITTEE OF PARKLANE INC
COMPANY, INC., SEPTEMBER 16, 1974:

A meeting of the Executive Committee of Parklane Hosiery Comp
was held on September 16, 1974 at the Executive Offices of th
1540 Union Turnpike, New Hyde Park, New York, 11040. The fol
Executive Committee members, constituting a quorum of the Ex
Committee, were present:

Herbert N. Somekh - President
Neil B. Persky - Executive Vice President
Charles Yaffe - Secretary

Mr. Somekh acted as Chairman of the meeting, and Mr. Yaffe acted as
Secretary.

Discussion was had concerning Mr. Somekh's compensation as Chairman of
the Board and President of the Corporation. The following resolutions
were adopted by a vote of Messrs. Yaffe and Persky, with Mr. Somekh
abstainining:

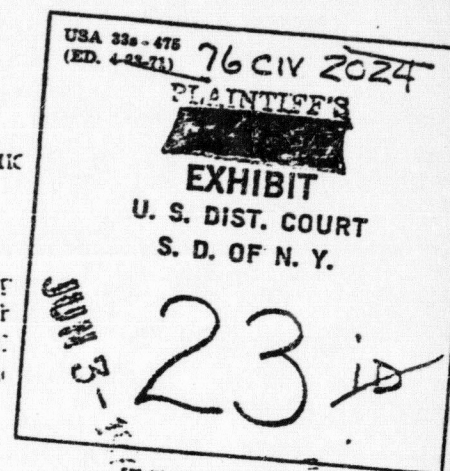
RESOLVED that the payment of compensation to Mr. Herbert N. Somekh as
Chairman of the Board and President of the Corporation for the fiscal
year ended September 28, 1974, in the aggregate amount of \$150,000 is
hercby ratified and approved.

RESOLVED that the compensation to be paid for the fiscal year ended
September 30, 1975, to Mr. Herbert N. Somekh as Chairman of the Board
and President of the Corporation shall be \$150,000; and that the
Treasurer of the Corporation is authorized to make payment of such amount
in such manner and at such time or times as the Treasurer may at his
sold discretion determine.

The meeting was then ajourned.

Charles Yaffe

Charles Yaffe, Secretary



0000558

Summons without Notice, Supreme Court, 1973
Personal Service.

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80 EXCHANGE

Supreme Court of the State of New York
County of NEW YORK

FIRST NATIONAL CITY BANK,

Plaintiff

against

HERBERT N. SOMEKH,

Defendant

Index N

Plaintiff

County

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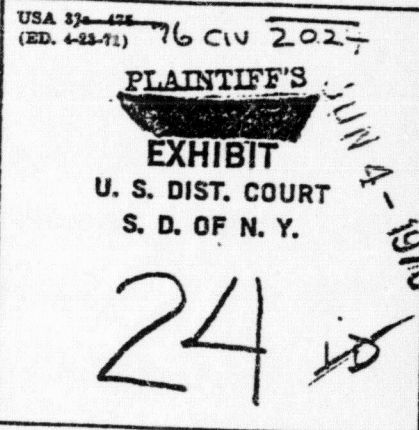
Plaint
is in

Summ

Plaintiff

399 Park Avenue

County of New York



To the above named Defendant

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, September 20, 1974

Defendant's address:

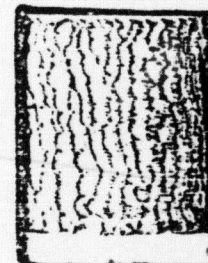
1540 Union Turnpike
New Hyde Park, New York

WEISMAN, CELLER, SPETT, MODLIN & WERTHEIMER
Attorney(s) for Plaintiff

Post Office Address

425 Park Avenue
New York, New York 10022
Tel.: (212) 371-5400

Filed 10-2-74



0000559

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FIRST NATIONAL CITY BANK,

Plaintiff,

- against -

HERBERT N. SOMEKH,

Defendant.

VERIFIED COMPLAINT

Plaintiff, for its complaint herein by Weisman, Collier,
Spett, Modlin & Wertheimer, its attorneys, alleges:

1. That at all times hereinafter mentioned, plaintiff was and still is a national banking association with its principal office in the City, County and State of New York.
2. That heretofore and on or about June 2, 1972, at New York, N.Y., for value received, defendant Herbert N. Somekh made, executed and delivered to plaintiff his promissory note in writing wherein and whereby he promised to pay to the order of the plaintiff on demand at its office or branch at 55 Wall Street, New York City, \$125,000.00 with interest. A copy of said note is annexed hereto, made part hereof and marked Exhibit 1.
3. That although plaintiff demanded payment of said note, no part thereof has been paid and there is now due and

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RECEIVED
JULY 10 1974

Owing from defendant to plaintiff thereon the sum of \$125,000.00 with interest at 8-1/2% from July 1, 1974.

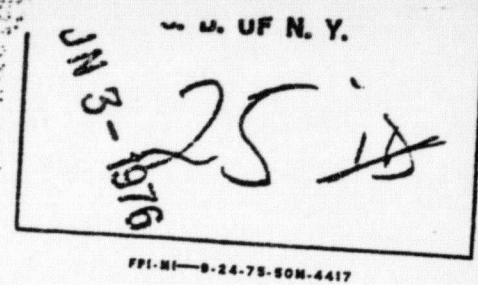
4. That plaintiff is the owner and holder of the said note.

WHEREFORE, plaintiff demands judgment against the defendant for the sum of \$125,000.00 with interest at 8-1/2% from July 1, 1974, together with the costs and disbursements of this action.

WEISMAN, CELLER, SPETT, MODLIN & WERTHEIMER
Attorneys for Plaintiff
Office & P.O. Address
425 Park Avenue
New York, New York 10022
Tel.: (212) 371-5400

0000561

HERBERT N. SOMEKH
19 Dorset Road
Great Neck, New York



December 6, 1974

First National City Bank
399 Park Avenue
New York, New York 10022

Attention: Mr. John T. Redding,
Assistant Vice President

Gentlemen:

Reference is herewith made to the action instituted in the Supreme Court, New York County, wherein you are the plaintiff and I am the defendant, to recover the sum of \$125,000.00 with interest at 8-1/2%, Index No. 14881/1974.

I acknowledge that I am truly and justly indebted to you for the aforesaid sum with interest from December 1, 1974 and hereby request an extension of time to pay the same, upon the following terms and conditions:

1. I agree to pay to you said sum of \$125,000.00 with interest without defense, offset or counterclaim, as follows: \$4,000.00 on January 1, 1975 and \$4,000.00 on the first day of each succeeding month thereafter to and including November 1, 1977, each of which payments shall be applied first to interest at 8-1/2% on the unpaid balance from December 1, 1974 and the balance to principal, and the unpaid balance with accrued interest on December 1, 1977.

2. Payments shall be made to First National City Bank, Suspense Department, 399 Park Avenue, New York, New York 10022, attention Mr. John T. Redding, Assistant Vice President, or to such other address as you may designate in writing.

0000562

3. I may prepay the whole or part of the balance at any time but any partial prepayments shall be credited against the payments last to become due.

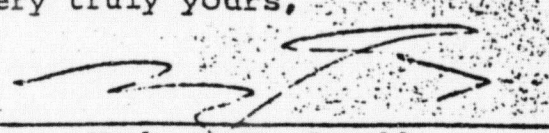
4. Upon your approval of the foregoing, you will deliver to my attorneys, Kaye, Scholer, Fierman, Hays & Handler, stipulations of discontinuance, without prejudice, of the aforesaid action pending against me. I am delivering to you herewith a confession of judgment for the amount claimed in the said action and you shall not file the same as long as the foregoing payments are made when due. Upon default in the payment of any installment promptly when due and the said default continuing for ten (10) days, the entire unpaid balance shall become due and payable after you or your attorneys shall have given Kaye, Scholer, Fierman, Hays & Handler oral or written notice of said default, unless said default shall have been cured within two (2) days, and in the event that said default has not been cured, you may file the said confession of judgment against me without further notice, crediting me with any payments theretofore made.

5. The waiver of any default or defaults shall not be deemed to operate or be construed as a waiver of any subsequent or successive defaults.

6. I shall furnish you with a copy of my 1974 U.S. Tax Return within ten (10) days after filing in 1975 and shall, at the same time, furnish you with a financial statement on your form.

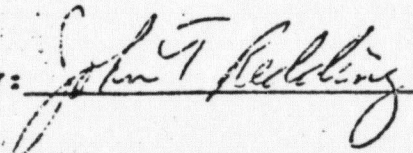
Please signify your acceptance of this agreement by signing the same where indicated and returning a copy to me.

Very truly yours,


Herbert N. Somekh

Agreed:

FIRST NATIONAL CITY BANK

By: 

0000563

DIV EX 504

MINUTES OF A MEETING
OF THE
BOARD OF DIRECTORS
OF
PARKLANE HOSIERY COMPANY, INC.
December 30, 1974

USA 22a-475
(ED. 4-23-71)

JUN 3-1976

PLAINTIFF

EXHIBIT

U. S. DIST. COURT
S. D. OF N. Y.

26 13

FPI-MI-8-24-75-SOM-4417

A meeting of the Board of Directors of Parklane Hosiery Company, Inc. (the "Corporation") was held on December 30, 1974 at the executive offices of the Corporation, 1540 Union Turnpike, New Hyde Park, New York.

The following directors, constituting a quorum of the Board of Directors, were present:

Herbert N. Somekh

Charles Yaffe

Neil B. Persky

Mr. Somekh acted as Chairman of the meeting and Mr. Yaffe acted as Secretary.

Discussion was had concerning certain proposed transactions whereby the Corporation would acquire from Mr. Somekh partnership interests in Riverbend Development Associates and a parcel of real estate in Pennsauken, New Jersey. An outline of these transactions was presented to the meeting and was discussed in depth. The following resolutions were adopted by a vote of Messrs. Yaffe and Persky, with Mr. Somekh abstaining:

0000564

RESOLVED, that this Corporation shall enter into the transactions with Herbert N. Somekh described in the outline presented to this meeting, which transactions contemplate the acquisition from Mr. Somekh of his partnership interests in Riverbend Development Associates and a parcel of real estate owned by Mr. Somekh and located in Pennsauken, New Jersey.

RESOLVED, that any one or more of the officers of this Corporation is authorized to take such action and execute such documents as such officer or officers, in his or their discretion, may deem advisable in order to consummate the transactions with Herbert N. Somekh described in the outline presented to this meeting or with such changes in the transactions as such officer or officers, in his or their discretion, may deem advisable.

Discussion was next had concerning Mr. Somekh's compensation as Chairman of the Board and President of the Corporation. The following resolutions were adopted by a vote of Messrs. Yaffe and Persky, with Mr. Somekh abstaining:

RESOLVED, that the payment of compensation to Mr. Herbert N. Somekh, as Chairman of the Board and President of the Corporation, for the fiscal year ended September 30, 1974 in the aggregate amount of \$150,000 is hereby ratified and approved.

RESOLVED, that the compensation to be paid for the fiscal year ending September 30, 1975 to Mr. Herbert N. Somekh as Chairman of the Board and President of the Corporation shall be \$150,000; and that the Treasurer of the Corporation is authorized to make payment of such amount in such manner and at such time or times as the Treasurer may in his sole discretion determine.

The meeting was then adjourned.

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Charles Yaffe, Secretary of

NOTE 7 - SUBSEQUENT EVENTS.

27 14
FPI-81-9-24-78-SOM-4417

(a) On December 30, 1974, the Company purchased from Herbert N. Somekh, an officer of the Company, approximately 5 acres of undeveloped land in Pennsauken, New Jersey for \$300,000. The purchase price is evidenced by a note and is payable on June 30, 1978, with interest payable quarterly, commencing on March 31, 1975 at 1% in excess of the prime loan rate of Bankers Trust Company. The note is subordinated to the bank debt (see Note 7(c)). The Company has granted Herbert N. Somekh a first mortgage on the Pennsauken property as collateral for the notes payable.

(b) On December 30, 1974, the Company purchased from Herbert N. Somekh 92% (42.32% of the total partnership interest) of his rights as a general partner to the profits, losses and distributions after the return of capital, of Riverbend Development Associates, a limited partnership consisting of real estate developers in Tulsa, Oklahoma. Effective December 30, 1974, Herbert N. Somekh also transferred to the Company his Class B limited partnership interest in the aforementioned partnership which interest entitles the Company to 5% of the profits, losses and distributions after the return of capital. The purchase price for such interest aggregated \$931,000 and is payable (i) \$20,000 in cash, (ii) \$680,000 in notes due on demand, with interest payable quarterly at 1% in excess of the prime loan rate of Bankers Trust Company, commencing March 31, 1975 (\$175,000 was paid as of June 6, 1975, at which time the Company issued a new note, subordinated to the bank debt, for \$505,000 payable in 12 consecutive monthly payments of \$25,000 each, commencing June 30, 1975, except that the payment due in January 1976 will be increased by \$200,000 with a final payment at June 30, 1976 of \$5,000), (iii) \$100,000 in notes due on demand with interest payable quarterly at 1% in excess of the prime loan rate of Bankers Trust Company, commencing March 31, 1975, (iv) \$6,000 in notes (subordinated to the bank debt) due June 30, 1978, with interest payable at 1% in excess of the prime loan rate of Bankers Trust Company, commencing March 31, 1975 and (v) \$125,000 in notes due in 35 equal monthly installments of \$4,000, commencing January 1, 1975, each including interest at 1% in excess of the prime loan rate of Bankers Trust Company, with final payment due on December 31, 1978.

In addition, the Company purchased from Herbert N. Somekh a further 5% (representing 2.30% of the total partnership interest) of his rights as a general partner to the profits, losses and distributions, after the return of capital, of the aforementioned partnership. Transfer of this interest is to be completed as of January 1, 1976. The purchase price of \$47,500 (subordinated to the bank debt) is due on June 30, 1978, with interest payable quarterly at 1% above the prime loan rate of Bankers Trust Company, commencing March 31, 1975.

Pursuant to the terms of the aforementioned agreement, among other items, the notes are collateralized by assignment of the Company's partnership interests to Herbert N. Somekh. It is contemplated that the Company will convert its general partnership interest to a Class B limited partnership upon completion of a pending agreement.

0000566

NOTE 7- SUBSEQUENT EVENTS. (Continued)

(c) The Company entered into an agreement with Bankers Trust Company in June 1975 to refinance an existing \$750,000 loan. Under the agreement, the Company issued a new promissory note in the amount of \$750,000 which bears interest at 2% above the bank's prime lending rate until maturity in March 1978. The note is payable in 22 consecutive monthly payments of \$25,000 each, commencing June 30, 1976, except that the payment due on January 31, 1977 will be increased by \$200,000.

The covenants of the loan agreement require the Company, among other things, to maintain stockholders' equity of not less than \$3,500,000 and to maintain the ratio of consolidated total liabilities (excluding subordinated debt, as defined) to stockholders' equity in the Company at any time of not more than 2.35 to 1. In addition, the Company is restricted in (a) payment of executive compensation, (b) capital expenditures, (c) opening of new stores, (d) payment of cash dividends and other distributions and (e) the purchase of its own stock.

0000567

May 30, 1974

Mr. Robert Curtiss
Ely Cruickshank
233 Broadway
New York, N.Y.

Dear Mr. Curtiss;

I did get your message and letter, and unfortunately, could not get back to you in the time you specified.

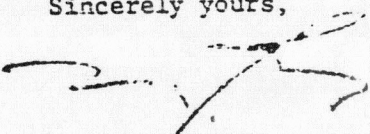
I am attempting to do the best I can in putting the pieces together. I have had extensive conversations with our sub-tenant Jo-Ray and our franchisee. The initial reaction that I received was not everything I anticipated. Therefore, it was impossible for me to sign and return the letter you suggested.

What I am doing is as follows:

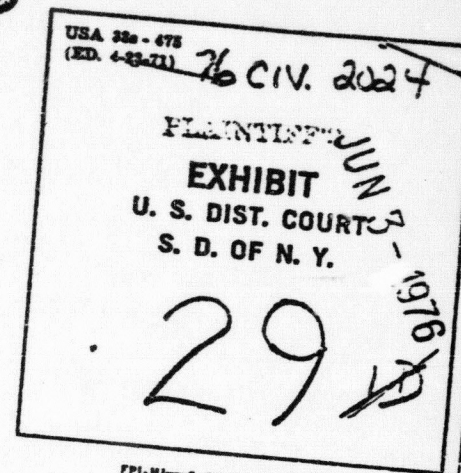
I am having our attorneys, Kaye, Scholer, Fierman, Hays and Handler get in touch with Mr. Frankel who represents you to find out the exact type of releases that are acceptable to the Federal Reserve. We will attempt to get all the parties concerned to send these releases for the specified numbers that are agreeable to them, and deposit these releases in escrow, with Kaye, Scholer for a specified period of time. In that way, the Fed will have had an option period to think their situation over and make a decision as to whether or not they want to bring this matter to the conclusion that I am suggesting.

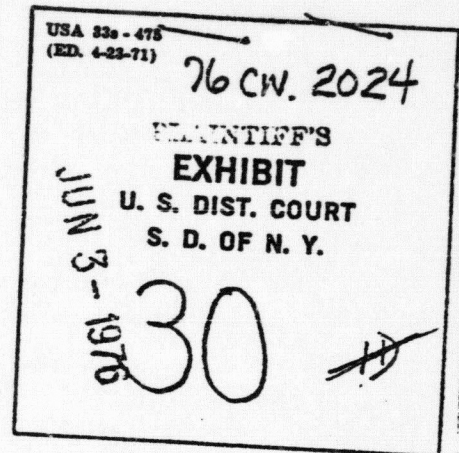
I am not sure that the entire package can come in at the million dollars that we talked about. It may cost another \$200,000 or so.

Sincerely yours,


HERBERT N. SOMER
HNS:skb

0000568





June 27, 1974

Mr. Robert Curtiss
Ely Cruickshank
233 Broadway
New York, N.Y.

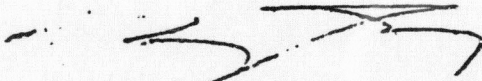
Re: 68-70 Nassau Street
New York, N.Y.

Dear Mr. Curtiss:

After extensive negotiations with our sub-tenant and Licensee, we now have express, written authority that upon payment of \$1,200,000 for the termination and cancellation of any and all rights and interests of all parties in respect to the above property, and the execution of all suitable documents by all parties concerned, that the above matter can be satisfactorily consummated.

Be assured that the above figure is not a negotiable one and is based upon protracted discussions and negotiations with the above parties. It is necessary that we know whether such figure is acceptable to your client not later than July 10, 1974 because our authority expires several days later.

Very truly yours,


HERBERT N. SOMEKH

cc: B. Harrison Frankel, Esq.
Kelley Drye Warren Clark Carr & Ellis
350 Park Ave.,
New York, N.Y. 10022

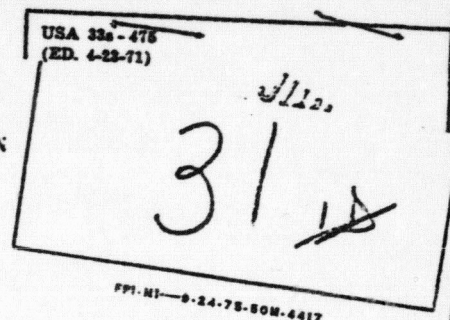
0000569

ESTABLISHED 1794
Ely-Cruikshank Co. IN
Realtors

233 BROADWAY, NEW YORK, N.Y. 10007

212/766-9626

ROBERT S. CURTIS, C.R.E., C.P.M.
REAL ESTATE COUNSELOR



July 1, 1974

Mr. Herbert N. Somekh, President
Parklane Hosiery Company, Inc.
1540 Union Turnpike
New Hyde Park, N. Y. 11040

Re: 68-70 Nassau Street
New York, N. Y.

Dear Mr. Somekh:

I have the letter dated June 27, 1974 signed by you prepared by counsel as it refers to this captioned property and premises therein leased to Parklane Hosiery Co., Inc.

The proposal you now present as contrived with your sub-tenant appears not to reflect your continuing expression of co-operation which frequently we discussed. Over recent months and at one time, I made it quite clear that the Federal Reserve Bank of New York was willing to pay a consideration of \$800,000. for a complete vacating. Whether this offer still holds is a conjecture.

I shall pass your letter to the proper parties for their information.

Very truly yours,

Robert S. Curtis

RSC:dh

0000570

ESTABLISHED 1900
Ely-Guikshank Co
Realtors

233 BROADWAY, NEW YORK, N.Y. 10001

212/788-9826

ROBERT S. CURTISS, C.R.E., C.P.M.
REAL ESTATE COUNSELOR

USA 330-476
(ED) 1-00 713
D. OF N. Y.
76 CIV. 2024

32 18

FPI-M-9-24-75-508-4417

06-70 1222

October 7, 1974

Copy attached
I
Mr. Treiber's
memo
10/15/74

Mr. William F. Treiber
Federal Reserve Bank of New York
33 Liberty Street
New York, New York 10045

Re: Parklane Hosiery Company, Inc., Lessee
Corner, John and Nassau Streets

Dear Bill:

At our conference on October 4th we discussed fully the present status of situations concerning the effort on our part to terminate this tenant's lease for a consideration. The normal lease expiration date is December 31, 1978. Parklane pays an annual rental of \$16,500. and since that Company first realized they may be requested to vacate prior to lease expiration, Parklane has paid \$82,500. in rentals.

Parklane is a public company with stock listed on the American Stock Exchange. This chain of hosiery and lingerie stores across the country numbers close to 400 and their sales have held up extraordinarily well due in part to their cut rate price policy. The President, Mr. Herbert N. Somekh, has conferred with me personally during the last few years, I should say in our joint attempt to evolve a plan or the amount of consideration acceptable to the three parties involved.

That point is the problem. Negotiating with Parklane alone would have caused a vacating several years ago, no doubt about that in my opinion. But Mr. Somekh's Parklane store operator is a Franchisee who has demanded a cash consideration to vacate, in an unreasonable amount at that, for his vacating. Mr. Somekh's sub-tenant's business now Jo-Ray Food, Inc., was purchased several years ago by questionable characters who very definitely have attempted to hold up all parties concerned. The sub-tenancy is included in Parklane's lease with a survival provision which enables them to assume the tenant's position should Parklane default in the

0000571

Mr. William F. Treiber

October 7, 1974
Page 2

performance of their lease. The sub-tenant's rent is specified -- 9,000. a year since January 1, 1969 and until December 31, 1978. That act prevented us from other plans for vacating we had developed.

Efforts have been made by Jo-Ray's attorneys to negotiate directly with me but with your concurrence I have insisted we will discuss termination terms only with the Bank's direct tenant, and in turn, the tenant's representative would discuss termination with the sub-tenant and with the franchisee.

Several years ago it became obvious that the owner of this property was the Bank, and we were obliged then to so advise Mr. Somekh. With that went my assurance that our discussions would be forthright, responsible and final. I must say in my opinion Mr. Somekh has been straightforward with me, I believe he has dealt with me honestly and he does not prefer the position his Parklane company has been forced into, that of a "hold-out". His stockholders are aware of this particular situation and expect the problem will be equitably resolved. By equitably I mean that Mr. Somekh has reiterated to me his Board expects Parklane to receive no less an amount than is received either by his sub-tenant or the franchisee.

Without now reviewing steps taken in this extended negotiating process as events have been reported to you, I present the current status following a long conference I had with Mr. Somekh previous to meeting with you last Friday afternoon, October 4th.

Mr. Somekh is of the opinion that a full vacating of the premises in question can be effected upon payment of \$1,200,000. Jo-Ray's new attorney, Richard Coplon, Esq., wrote to Mr. Somekh on May 16, 1974 (copy enclosed) agreeing to accept \$600,000. as a compromise figure. Mr. Somekh wrote to me on June 27, 1974 (copy enclosed) agreeing to a vacating upon payment of \$1,200,000. You then received a copy of my letter of July 1, 1974 to Bob Lloyd in which I set forth the Bank's alternatives.

My October 4th meeting with Mr. Somekh revealed the following:

1. Mr. Somekh will attempt to obtain a time extension from June 14, 1974 as stated in Mr. Coplon's letter of May 16, 1974 to a date later this month of October, for his client's acceptance of \$600,000.

0000172

Mr. William F. Treiber

October 7, 1974
Page 3

2. Mr. David Shamula, the franchisee, finally has advised Mr. Somekh he will vacate and deliver the premises to him upon payment of \$300,000. Mr. Somekh has been unable to reduce that figure.
3. Mr. Somekh on behalf of Parklane has agreed with me to accept \$300,000. and not one-half of the total payment as previously stated.

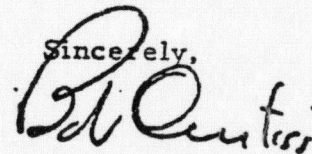
Upon my advise to Mr. Somekh that \$1,200,000 will be paid he immediately will attempt to secure respective letters from Counsel for a vacating of the two occupied premises by a date certain upon payment of the amounts stated. I suggested Ben Frankel may wish to advise Messrs. Unger and Coplon the form of such commitment letters. I would not proceed directly to the formal agreement. We are obliged to deal with one party whose word is worthless. His counsel's commitment letter will be more meaningful. Then the vacating agreement and procedure would be submitted by Mr. Frankel and payments made upon absolute vacating.

My conclusion is that I recommend the Bank proceed to authorize the total consideration payment of one million two hundred thousand dollars, (\$1,200,000.).

I am certain the existence of that corner building will be a hazard and considerable inconvenience in the construction of your new building. Furthermore just the economics of the situation should be a justification to make the payment. The third point is the public relations factor. As construction proceeds the small corner building will become a spectacle and a reaction may normally reflect unfavorably upon the Bank.

I will be pleased to communicate with Mr. Somekh when you advise me of your decision.

Sincerely,



RSC:dh
Enclosures

Parklane Hosiery Company, Inc. Counsel:
Ronald L. Unger, Esq.
Kaye, Scholer, Fierman, Hays & Handler
425 Park Avenue
New York, N. Y.

0000573

Quikshank Co., Inc.

Mr. William F. Treiber

October 7, 1974

Page 4

Jo-Ray Food, Inc. Counsel:

Richard Coplon, Esq.

Haffinger, Friedland & Roth

10 East 53rd Street

New York, New York 10022

0000574

NY 10/20/75

October 29, 1974

Mr. Thomas E. Baggott
Bankers Trust Company
550 Seventh Avenue
New York, N.Y.

Dear Tom:

I heard from Kaye, Scholer and have been told by them
that Steve Fried may have found the mortgage documents.

Of course I instructed them to immediately proceed with
closing the deal as soon as possible.

Also, and again this is off the record since until I
have the money in my hand, I don't want to say that
I have any deals, but I have had several conversations
with the Federal Reserve and it seems that we may be
heading towards a deal that would net Parklane \$300,000
that can close around the end of the year. I am keeping
my fingers crossed since I realize that this would mean
so let's both hope it gets done.

Many thanks,

Sincerely,

HERBERT N. SONEKH
HNS:akb

USA 33a - 475 (ED. 4-23-71)
JUN 3 - 1976 PLAINT
EXHIBIT
U. S. DIST. COURT S. D. OF N. Y.
33

FPI-MI-9-24-75-SOM-4417

0000575

ESTABLISHED 1794
Ely-Cruikshank Co. Inc.
Recallers

233 BROADWAY, NEW YORK, N.Y. 10007

212/766-0020

ROBERT S. CURTISS, C.R.E., C.P.M.
REAL ESTATE COUNSELOR

May 16, 1974

Mr. Herbert N. Somekh, President
Parklane Hosiery Company, Inc.
1540 Union Turnpike
New Hyde Park, N. Y. 11040

Re: 68-70 Nassau Street

Dear Mr. Somekh:

In accordance with our conversations today I recognize that you as well as The Federal Reserve Bank of New York are desirous of concluding an arrangement toward vacating your store and that of your sub-tenant, Jo-Ray Foods, Inc. and others.

Consequently, I have been authorized as Consultant to the Bank to offer you a consideration of \$800,000. in cash for a complete vacating of your premises and those of your sub-tenant, each to execute cancellation documents effective 30 days from this date.

This offer must be accepted in writing to me by registered mail on or before May 26th, 1974. Thereafter counsel for the Bank will prepare appropriate cancellation agreements for authorized signatures.

For your information, I enclose two prints of the final architect's plan of the new building to be constructed on the site. You will observe I have indicated in red pencil the area presently occupied by the Parklane and Jo-Ray stores which is planned to be excluded.

Very truly yours,

Robert S. Curtis

RSC:dh
Enclosures

✓bc: Mr. William F. Treiber

0000576

RECEIVED

MAY 15 1974

W. F. T.

ANSWERED

ATTENDED TO

76 CIV. 2024

PLAINTIFF'S
EXHIBIT

U. S. DIST. COURT
S. D. OF N. Y.

JUN 4 - 1976

36 *id*

FPI-MI-9-24-75-SOM-4417

May 15, 1974

Mr. Robert Curtiss
Ely-Cruickshank
233 Broadway
New York, N.Y.

Dear Mr. Curtiss:

Further to my conversation of yesterday, I am hereby enclosing copy of a letter received from Mr. Coplon (the attorney for Jo-Ray) indicating what I conveyed to you on the phone.

I honestly cannot readily understand either the Fed's position nor Jo-Ray's position. It seems to me that one party or the other knows more than what they are willing to tell me.

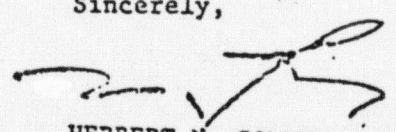
If the matter was worth \$800,000 to the Fed, I suppose closing it and getting rid of it may be worth the extra money that it would take to do so. At least we have gotten these people to the point of confirming things in writing as to the dollars that would make a deal. I must tell you that I do admire your negotiating ability since it was probably your attitude and position that finally got them into line whereby at least we can talk about something firm. It may be that it is not suitable to either you or me, but nevertheless, it is in writing and it is firm.

As to Parklane's posture, I certainly cannot see where we could modify the position that we have taken in my earlier letters and conversations with you.

I would like to urge that if you think and can recommend that this matter be closed, that you do give me the leeway necessary to attempt to close it. In any case, I am hoping to leave for the west coast on Monday night. I will not be back prior to the time of the expiration date of your last letter to me. If you can give me something to put in the works on Monday, I may be able to get things back on the track and hopefully resolve this matter, which is getting to be as annoying to the Fed, you and me, and I cannot see how I can include the Deli in this.

Sincerely,

0000577


HERBERT N. SOMER
HNS:skb

HOFFINGER, FRIEDLAND & ROTH

10 EAST 53RD STREET

NEW YORK, N.Y. 10022

ACK S. HOFFINGER
LAWRENCE N. FRIEDLAND
MURRAY ROTH
ROBERT Z. COBRISH
DAVID B. BERNFELD
RICHARD COPLON

TELEPHONE (212) 421-6045

May 16, 1974

Mr. Herbert N. Somekh
President
Parklane Hosiery Company, Inc.
1540 Union Turnpike
New Hyde Park, New York 11040

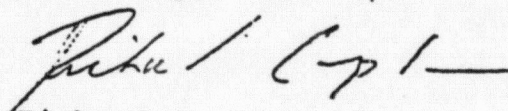
Re: 68 Nassau Street

Dear Mr. Somekh:

This letter is to acknowledge receipt of your letter dated May 15, 1974 and our conversation and meeting of that date concerning the above-mentioned premises.

As you know, our client--Jo-Ray Foods, Inc.-- had previously indicated that it would sell or surrender its lease for the premises for the sum of \$800,000. In light of your offer of \$400,000 of May 15, and in the interest of proceeding towards a settlement of this matter, Jo-Ray would be willing to accept a compromise of \$600,000 for the above-mentioned lease provided that closing for the sale or surrender occurs no later than June 14, 1974.

Sincerely,


Richard Coplon

RC:jm

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76 CIV. 2024

PLAINTIFF'S

EXHIBIT

U. S. DIST. COURT

S. D. OF N. Y.

JUN 4 - 1976

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FPI-M-9-24-78-SOM-4417

OFFICE OF
THE PRESIDENT

March 25, 1974

Mr. Robert Curtis
Ely-Cruikshank Co. Inc.
233 Broadway
New York, N.Y. 10007

Dear Mr. Curtis

Re: 68-70 Nassau Street

I do want to acknowledge yours of March 21st which I will forward to Richard Coplon, Esq. who represents our sub-tenant at the above captioned location.

However, I want to point out that I think at this point, the matter is quite academic since the offer that is being made does not meet with Parklane's basic requirement and the requirements of its franchisee. As I pointed out to you earlier, our positions have been consistent throughout; that we are willing to accept 2/3rds of the \$300,000 that was originally offered. In addition to that, we would negotiate with our sub-tenant who by now did give us a firm figure so that at least we can negotiate from there. If this is the extent of what you think is doable, that is to say the \$500,000 total, I honestly do not think there is any grounds on which an agreement can be derived, since we are not even at the level that is acceptable to Parklane and its franchisee, without taking into consideration the sub-tenant.

So, although I am sending it on to them, I am just not holding out any kind of hopes.

Many thanks.

Sincerely,

HERBERT N. SOMMER
HNS:skb

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

against-

PARKLANE HOSIERY CO., INC.
HERBERT N. SOMEKH

Defendants.

76 Civil 2024

COMPLAINT

JUDGE DUFFY

Plaintiff, Securities and Exchange Commission ("Commission"), for its Complaint herein alleges:

1. Defendants Parklane Hosiery Co., Inc. ("Parklane") and Herbert N. Somekh ("Somekh") have been engaged, are engaged, and are about to engage in violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), as amended, 15 U.S.C. 77q(a) and Sections 10(b), 13(a) and 14(a) of the Securities Exchange Act of 1934 ("Exchange Act"), as amended, 15 U.S.C. 78j(b), 78m(a) and 78n(a), and Rules 10b-5, 13a-1, 13a-13, 14a-3 and 14a-9 thereunder, 17 C.F.R. 240.10b-5, 240.13a-1, 240.13a-13, 240.14a-3 and 240.14a-9.

2. The Commission, pursuant to authority contained in Sections 10(b), 13(a) and 14(a) of the Exchange Act, 15 U.S.C. 78j(b), 78m(a) and 78n(a), has promulgated Rules 10b-5, 13a-1, 13a-13, 14a-3 and 14a-9 thereunder, 17 C.F.R. 240.10b-5, 240.13a-1, 240.13a-13, 240.14a-3, and 240.14a-9 respectively. Said rules were in effect at all times mentioned herein and are now in effect.

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U.S. District Court
S.D.N.Y.
J. B. Duffy

JURISDICTION AND VENUE

3. The Commission brings this action pursuant to authority conferred by Section 20(b) of the Securities Act, 15 U.S.C. 77t(b), and Sections 21(d) and 21(e) of the Exchange Act, as amended, 15 U.S.C. 78u(d) and 78u(e), to enjoin the illegal acts and practices of the defendants and for other relief.

4. This Court has jurisdiction of this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. 78aa.

5. The defendants have been engaged and are engaged in certain acts and practices within the Southern District of New York and elsewhere constituting the violations complained of herein. Such actions were effected by making use of the means and instrumentalities of interstate commerce and of the mails.

THE DEFENDANTS

6. Parklane is a New York corporation with its principal business office located at 1540 Union Turnpike, New Hyde Park, New York. Parklane is primarily engaged in the business of retailing women's hosiery products and accessories which are marketed through approximately four hundred stores throughout the United States. In December of 1968, Parklane publicly offered 300,000 shares of its common stock at \$9.00 per share. Subsequently, the stock was traded on the American Stock Exchange ("AMEX") until October 31, 1974 at which time its stock was delisted when Parklane became a privately-held corporation.

7. Parklane has been registered with the Commission pursuant to Section 12 of the Exchange Act, 15 U.S.C. 781, since 1969 and pursuant to such registration, is required to file certain reports with the Commission and with the Amex. As of September 30, 1974, Parklane had issued and outstanding 938,946 common shares of stock owned by approximately 771 stockholders. On or about October 14, 1974, pursuant to a shareholders' vote, Parklane converted its status as a publicly-owned company to a privately-owned company as more fully described in Count I of this Complaint.

8. Somekh is the Chairman of the Board of Directors ("Board"), President, and a founder of Parklane. He personally owned or controlled, directly or indirectly, approximately 71.6% of Parklane's common stock as of October 14, 1974. Somekh, residing at 19 Dorset Road, Great Neck, New York, continues to be the chief executive officer and principal shareholder of Parklane.

COUNT I

VIOLATIONS OF SECTION 17(a) OF THE
SECURITIES ACT, 15 U.S.C. 77q(a) AND
SECTION 10(b) OF THE EXCHANGE ACT, 15
U.S.C. 78j(b), AND RULE 10b-5 THEREUNDER,
17 C.F.R. 240.10b-5 -- FRAUD IN CONNECTION
WITH THE PURCHASE AND SALE OF SECURITIES

9. The Commission realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 8 hereof.

10. From in or about May, 1973 to date hereof, the defendants Parklane and Somekh, directly or indirectly, singly and in concert, by use of the means and instruments and instrumentalities of interstate commerce and of the mails, have been and are now, in the Southern District of New York and elsewhere, employing devices, schemes and artifices to defraud, making untrue statements of material facts and omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, and engaging in acts, practices, and a course of business which operated and continues to operate as a fraud and deceit upon the former and present shareholders of Parklane and others in connection with the purchase and sale of Parklane common stock, all in violation of Section 17(a) of the Securities Act, 15 U.S.C. 77q(a) and Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5.

11. As part of the scheme to defraud and deceptive course of business, defendant Somekh caused Parklane to solicit its shareholders with false and misleading proxy materials for the purpose of converting Parklane to a privately-owned company as part of a plan conceived by Somekh to avail himself of Parklane's corporate assets in order to reduce his large personal indebtedness. In that connection defendant Somekh owned and controlled, directly or indirectly, a sufficient number of Parklane shares to

determine the outcome of a shareholder vote in favor of converting Parklane to a privately-owned company. As part of this plan, public Parklane shareholders were to receive \$2.00 per share. In the proxy materials used and disseminated to Parklane shareholders, the defendants made and caused to be made untrue statements of material facts and omitted to state material facts, as more fully described below.

12. In or about 1971, defendant Somekh personally borrowed approximately \$900,000 from a bank, and thereafter, borrowed approximately \$300,000 from two other banks. In or about September, 1973, the lending banks became insistent that defendant Somekh commence to reduce these outstanding financial obligations.

13. In or about June 1974, in attempting to reduce his large personal indebtedness, defendant Somekh embarked upon a plan which provided for the conversion of Parklane from a public to a privately-owned company, and thereafter, once Parklane became privately owned and under Somekh's control, to cause Parklane to purchase Somekh's personal real estate holdings in exchange for cash and notes which Somekh, in turn, would utilize in reducing his personal indebtedness to the banks.

14. During the period from on or about June 5, 1973 to July 30, 1974, Somekh caused Parklane to purchase an aggregate of 121,054 shares of Parklane common stock, which shares were purchased in the open market and in private transactions. The acquisition of the 121,054 shares represented more than 10% of Parklane's outstanding shares at that time, and had the effect, among other things, of increasing the percentage of Parklane stock owned or controlled, directly and indirectly, by Somekh to 71.6%. This 71.6% control over Parklane by defendant Somekh guaranteed the requisite two thirds majority necessary, under New York Business Corporation law, for controlling any shareholders' vote on certain significant corporate matters of Parklane including converting Parklane to a privately-owned company.

15. In order to convert Parklane to a privately-owned company and to avail himself of Parklane's assets for the purposes set forth in paragraph 13 of this Complaint, in or about August of 1974, defendant Somekh caused the formation of a new corporate entity, New PLHC Corp. ("Newco"). At or about the same time, defendant Somekh and other Parklane shareholders under his control, transferred to Newco 71.6% of Parklane shares collectively owned by them. In turn, Somekh and those under his control received all of the shares of Newco which resulted in Somekh, through Newco, continuing to control Parklane.

16. In or about August of 1974, the defendants caused to be employed two appraisers purportedly to determine the fair value and price to be paid for each share of Parklane stock owned by Parklane's public shareholders.

17. Additionally, in or about August of 1974, Parklane's Board authorized the solicitation of proxies from Parklane's stockholders for a stockholders' vote on a proposed merger between Parklane and Newco which merger would have the effect of converting Parklane to a privately owned company.

18. In connection with Parklane's Board authorizing the solicitation of proxies, in or about September of 1974, defendant Parklane filed false and misleading proxy materials with the Commission, which described the proposed merger of Parklane and Newco whereby Parklane would become a privately-held company and each outstanding share of Parklane stock (other than the Parklane shares owned by Newco) would be exchanged for \$2.00. As described in the proxy materials, in lieu of accepting \$2.00 per share, a shareholder under New York State Law could reject the \$2.00 per share offer and institute appraisal proceedings for the purpose of assessing the fair value of such shares.

19. In connection with the proxy materials described in paragraph 18 of this Complaint, the defendants disseminated and caused to be disseminated to Parklane shareholders and others, such proxy materials which were false and misleading in that the defendants, among other things, made and caused to be made:

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- a. Statements as to various reasons why Parklane would be converted to a privately-owned company, when in fact, the true undisclosed reason for Parklane's conversion in corporate status was that Somekh was using such device in aid of meeting his personal financial obligations when there was no valid corporate purpose for such conversion in Parklane's status;
- b. Statements concerning the termination of negotiations with the Federal Reserve Bank of New York ("FRB") with regard to Parklane's leasing of property located in New York City from the FRB, when in fact, the defendants failed to disclose the existence of ongoing negotiations with the FRB concerning the cancellation of such leasehold rights which negotiations could have resulted in Parklane receiving substantial benefits; and
- c. Statements that Parklane had employed two appraisers to determine the fair value of Parklane stock, when in fact, the defendants failed to disclose in the proxy statement of Parklane that the two appraisers were not provided with sufficient information in order to prepare and provide a true and complete valuation of such stock.

20. On October 14, 1974, after Parklane disseminated the false and misleading proxy materials, the vast majority of Parklane shareholders, including Newco, voted to, in effect, convert Parklane to a privately-owned company and, with the exception of Newco, accept \$2.00 for each of the shares owned by them.

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21. In or about December of 1974 and subsequent to the shareholders' vote returning Parklane to the status of a private company, defendant Somekh sold certain of his real estate holdings to defendant Parklane for over \$1 million consisting of cash payments, interest bearing demand notes, and interest bearing installment notes.

22. Subsequently, by virtue of receiving the consideration for the sale of real estate to Parklane, as described in paragraph 21 of this Complaint, defendant Somekh was able to reduce his personal indebtedness.

23. By reason of the foregoing activities set forth in paragraphs 9 through 22 hereof, defendants Parklane and Somekh, and each of them, directly and indirectly, singly and in concert, by use of the means and instruments and instrumentalities of transportation and communication in interstate commerce and of the mails, violated Section 17(a) of the Securities Act, 15 U.S.C. 77q(a) and Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. 240.10b-5.

COUNT II

VIOLATIONS OF SECTION 13(a) OF THE EXCHANGE ACT, 15 U.S.C. 78m(a) AND RULES 13a-1 AND 13a-13 PROMULGATED THEREUNDER, 17 C.F.R. 240.13a-1 AND 240.13a-13 -- FALSE AND MISLEADING REPORTS FILED BY PARKLANE AND FAILURE TO FILE ANNUAL REPORTS

24. The Commission realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 23 hereof.

A. Annual Report Filed With The Commission
on Form 10-K

25. On or about July 10, 1975, for the fiscal year ending September 28, 1974 defendant Parklane, aided and abetted by defendant Somekh, filed or caused to be filed its annual report with the Commission on Form 10-K, pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a), and Rule 13a-1 promulgated thereunder, 17 C.F.R. 240.13a-1. Said Form 10-K report contained statements of material facts which were false and misleading as more fully described in Count I of this Complaint and was thereby not in compliance with the aforementioned Commission rules and regulations promulgated pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a).

B. Failure to File Annual Report

26. For the fiscal year ending September 30, 1975, defendant Parklane, aided and abetted by defendant Somekh, failed to file its annual report on Form 10-K pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a), and Rule 13a-1 promulgated thereunder, 17 C.F.R. 240.13a-1, which Form 10-K report was due to be filed with the Commission on or about December 30, 1975.

C. Quarterly Reports Filed With The Commission
on Form 10-Q

27. On or about October 23, 1975, defendant Parklane, aided and abetted by defendant Somekh, filed or caused to be filed its quarterly reports with the Commission on Form 10-Q, pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a), and Rule 13a-13 promulgated thereunder, 17 C.F.R. 240.13a-13 for the calendar quarters ending December 31, 1974 through June 30, 1975. Said reports contained materi-

ally false and misleading statements as more fully alleged in Count I of this Complaint and was thereby not in compliance with the aforementioned Commission rules and regulations promulgated pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a).

COUNT III

VIOLATIONS OF SECTION 14(a) OF THE
EXCHANGE ACT, 15 U.S.C. 78n(a), AND
RULES 14a-3 AND 14a-9 THEREUNDER, 17
C.F.R. 240.14a-3 AND 240.14a-9 --
FALSE AND MISLEADING PROXY STATEMENT

28. The Commission realleges and incorporates by reference each and every allegation set forth in Counts I and II of this Complaint.

29. On or about September 24, 1974, defendants Parklane and Somekh violated Section 14(a) of the Exchange Act, 15 U.S.C. 78n(a), and Rules 14a-3 and 14a-9 thereunder, 17 C.F.R. 240.14a-3 and 240.14a-9, in the solicitation of proxies for Parklane by the use of a proxy statement which was false and misleading and which omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not false and misleading in that said proxy statement, among other things, contained various misstatements and omissions as more fully described in Count I of this Complaint.

30. By reason of the foregoing, defendants Parklane and Somekh, directly and indirectly, by use of the means and instrumentalities of transportation and communication in interstate commerce and of the mails, violated Section 14(a) of the Exchange Act, 15 U.S.C. 78n(a), and Rules 14a-3 and 14a-9 thereunder, 17 C.F.R. 240. 14a-3 and 240.14a-9.

31. Unless enjoined, defendants Parklane and Somekh will continue to engage in acts and practices of similar purport constituting violations of Section 17(a) of the Securities Act, 15 U.S.C. 77q(a) and Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5, and defendants Parklane and Somekh will continue to engage in the acts and practices of similar purport constituting violations and aiding and abetting violations of Sections 13(a) and 14(a) of the Exchange Act, 15 U.S.C. 78p(a) and 78n(a), and Rules 13a-1, 13a-13, 14a-3 and 14a-9 thereunder, 17 C.F.R. 240.13a-1, 240.13a-13, 240.14a-3 and 240.14a-9 as set forth herein above.

WHEREFORE, plaintiff Commission respectfully demands:

A. A preliminary and a permanent injunction enjoining defendants Somekh, Parklane and its officers and directors, and their agents, servants, employees, attorneys, nominees, persons or entities under their control, and those persons acting in concert or participation with them, and each of them, from directly or indirectly, in connection with the purchase or sale of Parklane securities or any other securities, by the use of any of the means and instrumentalities of transportation or communication in interstate commerce, or of the mails or of any facility of any national securities exchange, from:

(1) employing any device, scheme or artifice to defraud;

(2) making any untrue statements of material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

B. A preliminary and permanent injunction enjoining defendants Somekh, Parklane and its officers and directors, and their agents, servants, employees, attorneys, nominees, and those persons acting in concert or participation with them, and each of them, from, directly or indirectly, filing or causing to be filed with plaintiff Commission any annual, periodic or other reports of Parklane or any other issuer, required to be filed pursuant to Section 13(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(a) and Rules 13a-1 and 13a-13 thereunder, 17 C.F.R. 240.13a-1 and 240.13a-13, which is materially false and misleading or otherwise not in compliance with said provisions.

C. A preliminary and permanent injunction enjoining defendants Somekh, Parklane and its officers and directors, and their agents, servants, employees, attorneys, nominees, and those persons acting in concert or participation with them, and each of them, from, directly or indirectly, by the use of the mails, or by any means or instrumentalities of interstate commerce or of any facility of a national securities exchange or otherwise, issuing, disseminating or causing to be issued or disseminated proxy solicitation materials to security holders of Parklane or any other issuer, required pursuant to Section 14(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(a) and Rules 14a-3 and 14a-9 thereunder, 17 C.F.R. 240.14a-3 and 240.14a-9, which are materially false and misleading or otherwise not in compliance with said provisions.

D. An order requiring defendant Parklane to amend its public filings and reports made with the Commission so as to correct any false and misleading statements contained in said reports, and to disclose, among other things, all material matters as more fully alleged in paragraphs 11 to 31 in this Complaint.

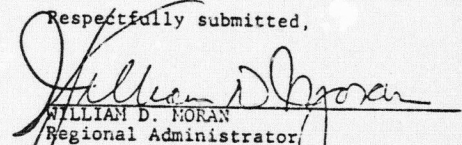
E. An order directing Parklane to file its Form 10-K for the fiscal year ended September 30, 1975.

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F. An Order: (i) appointing a Special Counsel who shall be charged with the responsibility to conduct an independent investigation concerning the correct valuation of the common stock of Parklane immediately prior to Parklane becoming a privately-owned company, (ii) empowering said Special Counsel to retain the services of an independent accountant and appraiser, the expenses for which shall be borne by defendant Parklane, (iii) requiring defendant Parklane to comply with any requests made by the Special Counsel appointed by this Court for access to the books, records or other documents of Parklane, and (iv) directing the Special Counsel to report to this Court and the Commission the results of such investigation and his recommendations as to the manner and extent of relief to be afforded to the former public shareholders of Parklane.

G. Such other and further relief as this Court may deem just and proper.

Respectfully submitted,


WILLIAM D. MORAN
Regional Administrator
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
26 Federal Plaza
New York, New York 10007
Telephone No.: (212) 264-1640

OF COUNSEL:

Donald N. Malawsky
Franklin D. Ormsten
Harry L. Garmansky
Nadine S. Liebhardt

Theodore A. Levine
Gretta Powers
Securities & Exchange Commission
Division of Enforcement
Washington, D.C.

Dated: New York, New York
May 5, 1976

0000-94

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
APR 5 1977
S.D.N.Y.

SECURITIES AND EXCHANGE COMMISSION, : 76 Civ. 2024 (NYD)
Plaintiff, :
- against - :
PARKLANE HOSIERY CO., INC. :
HERBERT N. SOMEKH, :
Defendants. :
----- x

AMENDED
NOTICE OF APPEAL

S I R S :

PLEASE TAKE NOTICE that defendants Parklane Hosiery Co., Inc. ("Parklane") and Herbert N. Somekh ("Somekh") hereby appeal to the United States Court of Appeals for the Second Circuit from so much of the Judgment and Order of this Court (Duffy, J.) entered in this action on March 9, 1977, as amended by an Order filed March 23, 1977, as directs Parklane to file, and Somekh to cause to be filed, with plaintiff, amendments to all public filings made or caused to be made by Parklane and Somekh since in or about September, 1974, and from the findings of fact and conclusions of law upon which such direction is based.

Dated: New York, New York
April 4, 1977

Yours, etc.,

JACOBS, PERSINGER & PARKER

By: James M. Jacobs
(Attorney of the Firm)
Attorneys for Defendants
Office and P. O. Address
70 Pine Street
New York, New York 10005
Tel. No. (212) 344-1866

TO: HARVEY L. PITT, ESQ.
General Counsel
Securities and Exchange Commission
500 North Capitol Street
Washington, D. C. 20540

WILLIAM D. MORAN
Regional Administrator
Securities and Exchange Commission
26 Federal Plaza
New York, New York 10007

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION	:	76 Civ. 2024 (KTD)
Plaintiff,	:	
- against -	:	<i>filed</i> <i>3/23/77</i>
PARKLANE HOSIERY CO., INC.	:	
HERBERT N. SOMEKH	:	<u>NOTICE OF CROSS-APPEAL</u>
Defendants.	:	

SIRS:

PLEASE TAKE NOTICE that the Securities and Exchange Commission, plaintiff above named, hereby cross-appeals to the United States Court of Appeals for the Second Circuit from the Judgment and Order denying certain requested relief sought against Parklane Hosiery Co., Inc. and Herbert N. Somekh, which Judgment and Order was entered in the above-captioned proceeding on the 9th day of March, 1977. Defendants have previously filed a Notice of Appeal from said Judgment on March 10, 1977.

Harvey L. Pitt
HARVEY L. PITT *by [signature]*
General Counsel

SECURITIES AND EXCHANGE COMMISSION
500 North Capitol Street
Washington, D.C. 20549
Telephone No.: (202) 755-1100

Dated: March 23, 1977

To: Jacobs, Persinger & Parker
70 Pine Street
New York, New York 10075
Attorneys for Defendants
Parklane Hosiery Co., Inc.
and Herbert N. Somekh

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

-against-

PARKLANE HOSIERY CO., INC.
HERBERT SOMEKH,

Defendants.

COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF MIDDLESEX)

ss.:

HERBERT N. SOMEKH, being duly sworn, deposes and
says:

1. I am a defendant and President and Chairman of
the Board of defendant Parklane Hosiery Company, Inc.
("Parklane") and am familiar with the pleadings herein and
the matters hereinafter set forth.

2. This affidavit is respectfully submitted (a)
in support of defendants' motion brought on by way of an
order to show cause why an order, pursuant to Rule 12(b)(6),
Fed. R. Civ. P., should not be made herein dismissing the
complaint upon the ground that it fails to state a claim upon
which relief can be granted, and (b) in opposition to plain-
tiff's motion for (i) a preliminary injunction enjoining de-
fendants from violating § 17(a) of the Securities Act of 1933,
15 U.S.C. § 77q(a) and §§ 10(b), 13(a) and 14(a) of the
Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b), 78m(a)
and 78n(a) and certain rules thereunder; (ii) an order re-
quiring Parklane to amend all public filings and reports made

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with the Securities and Exchange Commission (the "SEC"); (iii) an order directing Parklane to file its Form 10-K for the fiscal year ended September 30, 1975; and (iv) an order appointing a Special Counsel. A copy of the complaint is annexed hereto as Exhibit 1.

3. This motion is brought on by an order to show cause because the SEC has made a motion for preliminary relief which, on May 12, 1976, was made returnable on May 24, 1976, one day prior to the last day to move against or answer the complaint -- a complaint which defendants contend is one upon which relief cannot be granted. This motion, if granted, would determine the action and moot plaintiff's motion. Accordingly, it is respectfully submitted that defendants' motion to dismiss should be fully heard and determined prior to plaintiff's motion.

Background of the Action

4. From 1968 to October 1974, Parklane had been a public company engaged in retailing of women's hosiery and accessory products. In October 1974, Parklane, under the merger laws of the State of New York, became a private, rather than a public company. More than one and one-half years later, the SEC commenced its action by the filing of a complaint which alleges, in substance, that the proxy materials in connection with the special meeting of shareholders at which the merger was approved contained certain false and misleading statements and omissions of material facts; that these statements and omissions appeared uncorrected in the Forms 10-K and 10-Q filed thereafter by Parklane; and that these same statements and omissions were

part of a scheme by the defendants to defraud the former public shareholders of Parklane. A copy of the Proxy Statement dated September 24, 1974, distributed in connection with said special meeting (the "Proxy Statement"), is annexed hereto as Exhibit 2.

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5. More particularly, the complaint is based upon three specific items as to which it is claimed actionable statements were made or omissions occurred. Those three items are, as alleged in the complaint (¶19), the following:

(a) that the purported reason for effecting the change in Parklane's corporate status was to aid the individual defendant to meet his personal financial obligations;

(b) that certain purported negotiations with the Federal Reserve Bank of New York ("FRB") for the purchase by it of a lease it has with Parklane were ongoing and "could have resulted in Parklane receiving substantial benefits"; and

(c) that the two appraisers employed by Parklane to appraise the fair value of the Parklane shares "were not provided with sufficient information in order to prepare and provide a true and complete valuation of such stock."

The absence of merit in respect of each of those three items is discussed, in extenso, in defendants' accompanying memorandum of law which is based principally upon the SEC's own papers and annexed documents. The purpose of this affidavit is to provide the Court with certain additional information in respect of the selected items raised by the SEC.

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6. While there had been discussions with the FRB concerning its desire to purchase the lease with Parklane, a meaningful or viable offer for the purchase of the lease was not outstanding when the proxy materials were issued or thereafter. By that time, such discussions as took place had covered a six-year period. In such circumstances, the proxy statement disclosed the following (page 15):

"Early this year, the Company received a substantial offer with respect to a property, part of which is occupied by a franchisee and the balance by another sublessee, for the assignment of the Company's lease and the cancellation of the rights of the occupants. On the basis of negotiations with the franchisee and other subtenant, the amount which would have been required to be paid to them would have represented substantially all of the sum offered. The offer has been withdrawn and there are no negotiations at present. The Company is unable to determine if another offer will be made."

The accuracy of this disclosure is better understood in the context of Parklane's prior discussions with FRB regarding the possible acquisition of its lease.

7. In or prior to 1968, FRB had acquired all, or most, of the buildings on a block in downtown New York City. In 1961, Parklane had leased one of these buildings, at 68-70 Nassau Street, the lease for which had a term ending December 31, 1978. Parklane then sublet half of the leased building to a Parklane franchisee and the other half to Anbel Delicatessen, Inc., whose rights in the sublease were subsequently transferred to Jo-Ray Foods, Inc. ("Jo-Ray"). The termination date of the sublease was the same as the termination date of the FRB-Parklane lease.

8. In or prior to 1968, FRB, through its real estate consultant, Robert S. Curtiss of Eli-Cruikshank Co., Inc., sought to acquire the rights to all outstanding

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long-term leases at its Nassau Street properties in order to construct a new office building on the site. Mr. Curtiss commenced sporadic discussions for such purpose with Parklane in 1968.

9. Finally, in 1973 FRB offered Parklane \$800,000 for its leasehold rights to the building -- an offering price which soon proved to be unworkable because of the demand made by Parklane's sublessee. Thus, Jo-Ray demanded, initially \$1,600,000, and then \$1,200,000, for its rights to the sublease.

10. In early 1974, FRB renewed the \$800,000 offer in a letter to me dated May 16, 1974. A copy of that letter is annexed hereto as Exhibit 3. But, once again, the offering price proved to be unworkable. This time, Jo-Ray insisted upon \$600,000 for its interest in the sublease and the Parklane franchisee, occupying the other half of the building, wanted at least \$300,000 to relinquish its rights. Thus, the demands of the Parklane sublessee and Parklane franchisee exceeded the FRB offer by \$100,000 -- the amount of a loss which Parklane would have suffered if the \$800,000 offer were accepted. Copies of letters from the subtenant and franchisee setting forth their respective demands are annexed hereto as Exhibits 4 and 5, respectively.

11. On June 27, 1974, Parklane made a written counter-offer of \$1,200,000 to FRB. Had that counter-offer been accepted by FRB, and assuming that the Parklane subtenant and Parklane franchisee stood by the amount of their demands, Parklane would have realized a \$300,000 pre-tax extraordinary gain. However, in a written response, Mr. Curtiss indicated that even the existence of FRB's prior

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offer of \$800,000 was a matter of "conjecture."

Copies of Parklane's June 27, 1974 counter-offer and Mr.

Curtiss' reply of July 1, 1974 are annexed hereto as Exhibits 6 and 7, respectively. In his July 1, 1974 letter

Mr. Curtiss, referring to the former \$800,000 offer, noted:

"Whether this offer still holds is a conjecture." (emphasis added) Indeed, in a subsequent telephone conversation between Mr. Curtiss and me on or about July 15, 1974, Mr.

Curtiss informed me that the \$1,200,000 counter-offer was in fact unacceptable. I am informed and believe that Mr.

Curtiss, in his December 5, 1974 testimony before the SEC, testified as follows:

"Q Okay.

You told Mr. Somekh on that telephone conversation on July 15, 1974 --

A Yes.

Q -- that a million two is out of the question?

A That's right."

A copy of the portion of the SEC transcript containing that testimony is annexed hereto as Exhibit 8. Neither Parklane nor I had any further communication with Mr. Curtiss prior to the publication and distribution of the Proxy Statement dated September 24, 1974.

12. On or about October 4, 1974, I had a meeting with Mr. Curtiss at which I reiterated that Parklane would accept \$1,200,000 for the lease. However, in view of my experience acquired over some six years of discussions concerning the FRD lease and on the basis of the discussions had, I concluded as a matter of sound business judgment that nothing would come of those discussions. To this day, no agreement has been reached with FRB and there is no prospect of any agreement with FRB.

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13. Considering the circumstances of the discussions had with FRB in relation to the claims made by plaintiff here, the irony of its charge may be seen in the use made in plaintiff's moving affidavit of a letter I wrote to Bankers Trust Company dated October 29, 1974. Purporting to rely on that letter, plaintiff's moving affidavit erroneously states that it is "evidence" of my belief in the viability of negotiations between Parklane and FRB. More than that, plaintiff's moving affidavit, unmistakably misquoting the letter, alleges that I stated that a deal with FRB was "in the works." (emphasis added) That letter will be searched in vain for any such language by me. Nowhere was such a statement made. A copy of that letter is annexed to plaintiff's moving affidavit as Exhibit D. The on-again, off-again FRB-Parklane discussions which started in 1968 have never resulted in any agreement.

III

14. Though the Complaint also alleges (§19c) that the proxy materials failed to disclose that the two appraisers employed by Parklane to determine the fair value of the Parklane shares "were not provided with sufficient information in order to prepare and provide a true and complete valuation of such stock," it is devoid of any specification whatsoever of the information which was allegedly "not provided" to those independent appraisers.

15. Plaintiff's moving affidavit (§35), which makes a stab at specification, shows that there was not, in fact, an absence of disclosure. That affidavit alleges that

the defendants "failed to provide adequate corporate information to the appraisers concerning, among other things, the status of the negotiations between Parklane and the FRB heretofore described, and adequate information concerning the sale by Somekh of his personal real estate holdings to Parklane in return for substantial cash and note payments." However, it should be noted that there is no allegation in plaintiff's papers that anything was concealed from the independent appraisers or that the appraisers were not provided with any information which they sought to elicit.

16. To the contrary, I am informed and believe that Mr. Peter Russ of Thomson & McKinnon Auchincloss Kohlmeier, Inc., one of the independent appraisers, testified before the SEC on April 21, 1975 as follows:

"Q Did Mr. Somekh ever inform you that he had plans for the company when it became private other than hosiery and women's apparel?

A Not specifically, no.

Q Well, what did he tell you generally?

A He had some notions that if--- if he could develop--if he could use the cash flow of Parklane, he might merge some of his real estate operations into the company after it went private.

Q Did this have any bearing on your opinion letter?

A No." (emphasis added)

A copy of the portion of the SEC transcript containing that testimony is annexed hereto as Exhibit 9.

17. To the same effect, I am informed and believe that Mr. Frank Rubinstein of Foster Securities Corporation, the other independent appraiser, testified before the SEC on April 17, 1975 as follows:

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"...I was not as concerned with what he [Somekh] was going to do privately. I was more concerned with the fellow who had bought his stock and what he was going to get for it, not what Mr. Somekh was going to do."

As to the discussions between Parklane and FRE, Mr. Rubinstein testified:

"Q Did Mr. Somekh mention to you in the course of your evaluation anything about the possible sale back to the Federal Reserve Bank of a lease that Parklane held?

A In fact, you will find in my notes that I was aware of this possibility, and I asked the question about it. I asked the question about it and he said that he had nothing, that they had approached or there was some discussion sometime in the past and there was nothing at the moment, and I included it -- I said above valuation does not take into consideration any proceeds from the Nassau Store since it is impossible to ascertain."

A copy of the portion of the SEC transcript containing that testimony is annexed hereto as Exhibit 10.

IV

18. In any event, as is more fully shown in defendants' accompanying memorandum of law, it is respectfully submitted that the SEC is not entitled to the relief it seeks in the complaint and upon its motion. Parklane has been a private company since the merger was effected in October 1974. As such, it will no longer be subject to the filing and reporting requirements of the federal securities laws. Furthermore, I am not an officer, director or major shareholder of any public company and I never had, and do not have, any intention of ever violating the federal securities laws. I am also informed by the law firm of Kaye, Scholer, Fierman, Hays & Handler, General

counsel for Parklane, that the Form 10-K for the fiscal year ended September 30, 1975 will soon be filed with the SEC. Thus, there will be no necessity for this Court to order that the Form 10-K be filed.

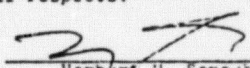
19. Finally, plaintiff, I am informed and believe, has also been aware of the fact that the appointment of Special Counsel and an appraisal of the fair value of Parklane's stock at the time of the merger is unnecessary by reason of the pendency of an appraisal proceeding in the Supreme Court of the State of New York, in and for the County of Nassau, and that said appraisal proceeding was initiated by Leo Shore, the plaintiff who brought a prior pending class action in this Court, entitled Shore v. Parklane, et al., (74 Civ. 4986 (IBW)). Substantial testimony and documentary production has taken place in the appraisal proceeding before the State Court-appointed appraiser. The testimonial transcript alone amounts to some 2,700 pages and it is believed that petitioners' direct case is approaching completion.

20. Indeed, I am informed and believe that when the prior related case was first brought in this Court and assigned to Judge Tyler, he indicated that he felt due deference should be shown to the appraisal proceeding, feeling that its outcome would have a bearing on the issues raised under the federal securities laws in the prior pending related case before him. It is respectfully submitted that this continues to be the case and is equally applicable here.

21. No prior application has been made for the relief sought herein.

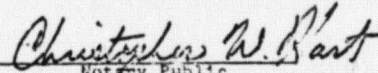
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22. For all the foregoing reasons and the reasons set forth in defendants' accompanying memorandum of law, it is respectfully submitted that (a) the motion to dismiss the complaint should be granted in all respects, and (b) plaintiff's motion for a preliminary injunction and ancillary relief should be denied in all respects.


Herbert W. Someth

Sworn to before me this

1st day of May, 1976.


Notary Public

State of Massachusetts
County of Middlesex

Personally came before me this 18th day of May, 1976, the above named Herbert W. Someth to me known to be the person who executed the foregoing instrument and acknowledged the same.

CHRISTOPHER W. HART
Notary Public, Oakland County, Mich.
My Commission Expires 3-12-78

EXHIBIT I

reprinted at A580

EXHIBIT 2

reprinted at A502

EXHIBIT 3

reprinted at A576

EXHIBIT 4

reprinted at A578

EXHIBIT 5

reprinted at A495

EXHIBIT 6
reprinted at A569

EXHIBIT 7

reprinted at A590

1 Mr. Somekh of July 15, 1974.

2 (The above-described document
3 was marked as Division's Ex-
4 hibit 17 for identification, as
5 of this date.)

6 BY MR. GARMANSKY:

7 Q Now, Mr. Curtiss, at the time of the July
8 15th telephone conversation with Mr. Somekh, did you pass
9 to the Fed that they recommend to Mr. Somekh \$1,200,000
10 for the cancellation of the lease?

11 A What was the time period that you said?

12 Q About July 16, 1974.

13 A No, no, not at that point.

14 Q Okay.

15 You told Mr. Somekh on that telephone
16 conversation on July 15, 1974 --

17 A Yes.

18 Q -- that a million two is out of the question?

19 A That's right.

20 Q Okay.

21 Now, let me ask you this question, Mr.

22 Curtiss.

23 A All right.

24 Q At the time of your telephone conversation
25 with Mr. Somekh, July 15, 1974, you tell him then the

CSA Reporting

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1 acquisition of New Mode, so it was a wash in essence.

2 Q How much did they borrow?

3 A I don't remember specifically.

4 Q Was it more than 50,000?

5 A I don't remember.

6 Q Did Mr. Somekh ever inform you that he had
7 plans for the company when it became private other than
8 hosiery and women's apparel?

9 A Not specifically, no.

10 Q Well, what did he tell you generally?

11 A He had some notions that if -- if he could de-
12 velop -- if he could use the cash flow of Parklane, he
13 might merge some of his real estate operations into the
14 company after it went private.

15 Q Did this have any bearing on your opinion letter?

16 A No.

17 Q Page 1 of your opinion letter marked Persky 2
18 states, "In order to arrive at a fair value of \$1.73 per
19 share, we undertook the following steps: familiarize our-
20 selves with the hosiery industry through interviews with
21 the management of the company."

22 Who in the company did you talk to?

23 A Somekh.

24 Q That was it?

25 A Yes.

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1 He obviously was staying in the business
2 because he thought it was something to be in.

3 Q So in going private would Mr. Somekh's
4 amount of money committed to the business increase,
5 meaning his personal money tied up in the business would
6 have increased?

7 A I don't know. I don't know.

8 You see I was not as concerned with what he
9 was going to do privately. I was more concerned with
10 the fellow who had bought his stock and what he was going
11 to get for it, not what Mr. Somekh was going to do.

12 I wasn't privy to his basic plans.

13 Q You were not aware of whether the -- the
14 percentage of ownership of Parklane for Mr. Somekh's point
15 of view would have gone up?

16 A No, I was aware of the general plan, so I
17 don't know whether it would have gone up or -- I assume
18 it would have gone up. I know he was keeping some of the stock
19 so I was aware of that. I was aware of the general
20 trend. I don't know whether he was going to be 90
21 percent, 95, 93. I really didn't know. He generally
22 told me that the cost of staying public in general terms,
23 we did discuss it, he felt that there was not real value
24 in being a public company both to the stockholder and
25 for himself.

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CSA Repetition

1 Q But he is -- he did convey to you the
2 idea he was continuing this business?

3 A Yes.

4 Q That he wasn't liquidating the business?

5 A No, there was no question about liquidating
6 the business. I certainly didn't get that impression.

7 BY MRS. LIEBHARDT-KELLY:

8 Q Did Mr. Somekh ever discuss with you the
9 fact that Parklane during these hard time had been
10 acquiring its own stock, during that past year?

11 A He -- I was notified and I don't know whether
12 he did or I found it out somewhere along the line, that the
13 last purchase that he had bought was X amount of stock
14 at a dollar a share.

15 I was aware of that. I think they had bought
16 14 thousand shares if I recall at a dollar.

17 BY MR. WALSH:

18 Q Did Mr. Somekh mention to you in the course
19 of your evaluation anything about the possible sale back
20 to the Federal Reserve Bank of a lease that Parklane held?

21 A In fact you will find in my notes that I was
22 aware of this possibility, and I asked the question about
23 it. I asked the question about it and he said he
24 had nothing, that they had approached or there was
25 some discussion sometime in the past and there was nothing
at the moment, and I include it -- I said above valuation

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CSA Reporting

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Does not take into consideration any proceeds from the Nassau Store since it is impossible to ascertain.

BY MRS. LIEBHART-KELLY:

Q Did you ever speak with anyone at the Federal Reserve Bank to corroborate Mr. Somakh's story?

A No, I didn't.

Q Did he -- did Mr. Somakh ever disclose to you the dollar figure that was bandied about for the lease?

A He said it was a substantial amount but that they had dropped it and he hadn't been in any -- and I assumed in discussion I think at the -- at the law firm that this was so because there was a material fact, and I had some experiences with an prospectus and I couldn't imagine a fact like this being left out and I accepted the fact that they didn't have my fix on it and since I could not give an opinion one way or the other, I did mention it in my report, that I had looked at it and that I at least pointed out the fact that it existed without reaching any conclusion because I don't think anybody could reach a conclusion on that.

All I did say is I am aware, I don't know what to make of it. This is the best way.

Q Mr. Rubinstein, if I were to tell you that the offer had been close to a million dollars --

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CSA Repetition